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HOUSE BILL NO. 301

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AMENDMENT IN THE NATURE OF A SUBSTITUTE

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(Proposed by the House Committee on Health and Human Services
on _____)

(Patron Prior to Substitute—Delegates Callsen and Walker [HB 664])

A BILL to amend and reenact §§ 32.1-261 and 63.2-1246 of the Code of Virginia, relating to adult adoptees; access to vital records.

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, legitimization, 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. An adult adoptee requesting a copy of the sealed original certificate of birth pursuant to § 63.2-1246 shall submit an application, proof of identification, and payment to the State Registrar. No sealed original certificate of birth filed with the State Registrar shall be (i) the certificate of birth in use, (ii) subject to amendment, or (iii) used by an individual for legal purposes.*

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

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. In cases of adoption, the State Registrar shall make available to birth parents a contact preference form
94 through which the birth parents may indicate whether they (i) would like to be contacted, (ii) would like to be
95 contacted through an intermediary, or (iii) would not like to be contacted. Such form (a) may be submitted or
96 amended at any time, (b) shall be considered a confidential communication from the birth parent to the
97 adopted person, and (c) shall be placed with the original birth certificate and provided to the adult adopted
98 person upon request of such birth certificate pursuant to subsection B. If the contact preference form is
99 amended, the State Registrar may destroy the previous version.*

100 **§ 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family.**
101 Upon the entry of a final order of adoption, the clerk of the circuit court in which it was entered shall
102 forthwith transmit to the Commissioner all orders and reports made in connection with the case, and the
103 Commissioner shall preserve such orders and reports in a separate file pursuant to this section and
104 § 63.2-1246.1. Except as provided in § 63.2-1246.1 and subsections C, D, and E of § 63.2-1247,
105 nonidentifying information from such adoption file shall not be open to inspection, or be copied, by anyone
106 other than the adopted person, if 18 years of age or over, or licensed or authorized child-placing agencies
107 providing services to the child or the adoptive parents, except upon the order of a circuit court entered upon
108 good cause shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not
109 be permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains written
110 permission to do so from such adoptive parent or parents.

111 No identifying information from such adoption file shall be disclosed, open to inspection, or made
112 available to be copied except as provided in § 63.2-1246.1 and subsections A, B, and E of § 63.2-1247 or
113 upon application of the adopted person, if 18 years of age or over, to the Commissioner, who shall designate
114 the person or agency that made the investigation to attempt to locate and advise the birth family of the
115 application. The designated person or agency shall report the results of the attempt to locate and advise the
116 birth family to the Commissioner, including the relative effects that disclosure of the identifying information
117 may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth
118 family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the
119 anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of
120 good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to
121 designate a person or agency to attempt to locate the birth family within 30 days of receipt of the application,

122 or if the Commissioner denies disclosure of the identifying information after receiving the designated
123 person's or agency's report, the adopted person may apply to the circuit court for an order to disclose such
124 information. Such order shall be entered only upon good cause shown after notice to and opportunity for
125 hearing by the applicant for such order and the person or agency that made the investigation. "Good cause"
126 when used in this section shall mean a showing of a compelling and necessitous need for the identifying
127 information.

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

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

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

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

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

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

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