

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 32.1-261 and 63.2-1246 of the Code of Virginia, relating to adult adoptees;*
 3 *access to vital records.*

4 [H 301]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 32.1-261 and 63.2-1246 of the Code of Virginia are amended and reenacted as follows:**8 **§ 32.1-261. New certificate of birth established on proof of adoption, legitimation, or determination**
 9 **of paternity, or change of sex.**10 A. The State Registrar shall establish a new certificate of birth for a person born in the Commonwealth
 11 upon receipt of the following:12 1. An adoption report as provided in § 32.1-262, a report of adoption prepared and filed in accordance
 13 with the laws of another state or foreign country, or a certified copy of the decree of adoption together with
 14 the information necessary to identify the original certificate of birth and to establish a new certificate of birth;
 15 except that a new certificate of birth shall not be established if so requested by the court decreeing the
 16 adoption, the adoptive parents, or the adopted person if 18 years of age or older.17 2. A request that a new certificate be established and such evidence as may be required by regulation of
 18 the Board proving that such person has been legitimated or that a court of the Commonwealth has, by final
 19 order, determined the paternity of such person. The request shall state that no appeal has been taken from the
 20 final order and that the time allowed to perfect an appeal has expired.21 3. An order entered pursuant to subsection D of § 20-160. The order shall contain sufficient information to
 22 identify the original certificate of birth and to establish a new certificate of birth in the names of the intended
 23 parents.24 4. A surrogate consent and report form as authorized by § 20-162. The report shall contain sufficient
 25 information to identify the original certificate of birth and to establish a new certificate of birth in the names
 26 of the intended parents.27 5. Upon request of a person and in accordance with requirements of the Board, the State Registrar shall
 28 issue a new certificate of birth to show a change of sex of the person and, if a certified copy of a court order
 29 changing the person's name is submitted, to show a new name. Requirements related to obtaining a new
 30 certificate of birth to show a change of sex shall include a requirement that the person requesting the new
 31 certificate of birth submit a form furnished by the State Registrar and completed by a health care provider
 32 from whom the person has received treatment stating that the person has undergone clinically appropriate
 33 treatment for gender transition. Requirements related to obtaining a new certificate of birth to show a change
 34 of sex shall not include any requirement for evidence or documentation of any medical procedure.35 6. Nothing in this section shall deprive the circuit court of equitable jurisdiction to adjudicate, upon
 36 application of a person, that the sex of such person residing within the territorial jurisdiction of the circuit
 37 court has been changed. In such an action, the person may petition for the application of the standard of the
 38 person's jurisdiction of birth; otherwise, the requirements of this section shall apply.39 B. When a new certificate of birth is established pursuant to subsection A, the actual place and date of
 40 birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original
 41 certificate and the evidence of adoption, paternity, or legitimation shall be sealed and filed and not be subject
 42 to inspection except upon *request by the adult adopted person pursuant to § 63.2-1246, upon order of a court*
 43 *of the Commonwealth, or in accordance with § 32.1-252. However, upon receipt of notice of a decision or*
 44 *order granting an adult adopted person access to identifying information regarding his birth parents from the*
 45 *Commissioner of Social Services or a circuit court, and proof of identification and payment, the State*
 46 *Registrar shall mail an adult adopted person a copy of the original certificate of birth. An adult adoptee*
 47 *requesting a copy of the sealed original certificate of birth pursuant to § 63.2-1246 shall submit an*
 48 *application, proof of identification, and payment to the State Registrar. No sealed original certificate of birth*
 49 *filed with the State Registrar shall be (i) the certificate of birth in use, (ii) subject to amendment, or (iii) used*
 50 *by an individual for legal purposes.*51 C. Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as
 52 provided by regulation.53 D. Upon receipt of notice or decree of annulment of adoption, the original certificate of birth shall be
 54 restored to its place in the files and the new certificate and evidence shall not be subject to inspection except
 55 upon order of a court of the Commonwealth or in accordance with § 32.1-252.

56 E. The State Registrar shall, upon request, establish and register a Virginia certificate of birth for a person

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

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

98 **§ 63.2-1246. Disposition of reports; disclosure of information as to identity of birth family.**

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

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

119 designate a person or agency to attempt to locate the birth family within 30 days of receipt of the application,
 120 or if the Commissioner denies disclosure of the identifying information after receiving the designated
 121 person's or agency's report, the adopted person may apply to the circuit court for an order to disclose such
 122 information. Such order shall be entered only upon good cause shown after notice to and opportunity for
 123 hearing by the applicant for such order and the person or agency that made the investigation. "Good cause"
 124 when used in this section shall mean a showing of a compelling and necessitous need for the identifying
 125 information.

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

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

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

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

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

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

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