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Recommended Citation

Jason Zarin, *Law Libraries Column: 2017 Legislative Update: Adoption law*, *Virginia Lawyer* (June 2017).

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Family Law Legislative Update

by Jason Zarin

THE VIRGINIA GENERAL ASSEMBLY adjourned *sine die* on April 5, 2017. One bill affecting adoption was successfully vetoed, and several bills affecting adoption were enacted. Following is a preview of some possible legislation that may be introduced for the 2018 session.

Vetoed bills (S.B. 1324 and H.B. 2025)

On March 23, 2017, Governor McAuliffe vetoed H.B. 2025 and S.B. 1324. These “religious freedom” bills shielded from civil liability persons or religious organizations with a “sincerely held religious belief” that marriages only between a man and a woman should be recognized. Opponents of these bills argued that such individuals and organizations would be able to discriminate against same-sex married couples wishing to adopt or qualify as foster parents. Both the House and the Senate failed to override the veto.

Enacted bills:

H.B. 2215: Adoption assistance; children with special needs

Primary sponsor Delegate David Toscano (D-Albemarle) introduced this bill to facilitate adoption of children with special needs. Under prior law, a special needs child could not receive adoption assistance unless there were reasonable efforts first to place the child in an appropriate adoptive home without adoption assistance.¹ H.B. 2215 amends section 63.2-1300 to exempt the adoption attempt requirement in cases in which “it is in the best interest of the child.” Factors that can be considered to determine whether the exemption is within the child’s best interest include whether the child has developed significant emotional ties with the foster parents if the foster parents wish to adopt the child.² The language in the amendment keeps open the possibility

of additional factors not expressed in the statute.³

H.B. 2215 also formalizes and expands qualifications for continuing adoption assistance payments beyond age 18. Adoption assistance payments may continue to age 21 if the child (1) “has a mental or physical handicap, or an educational delay resulting from such handicap, warranting the continuation of assistance” or (2) the initial adoption agreement became effective on or after the child’s sixteenth birthday, and the child is completing secondary, post-secondary, or vocational education; employed for at least eighty hours per month; participating in an employment program; or incapable of doing any of these activities due to a medical condition.⁴

S.B. 1412: Paid leave for state employees who adopt and paternal leave
Primary sponsor Sen. David Suetterlein (R-Floyd) introduced this bill to extend six weeks of parental leave to state employees who adopt an infant under 1 year old and to fathers of newborns. It will take effect on July 1, 2018, but only if the bill is reenacted in the 2018 session of the General Assembly.⁵

Preview of possible bills for the 2018 Session:

As noted above, S.B. 1412 will not take effect unless reenacted, so it is likely that it will be reintroduced at the 2018 session.

Another issue that has received some press, and may result in a bill, is the ten-year waiting period to qualify as a foster or adoptive parent if the applicant has a criminal record of a drug-related offense.⁶ In the neighboring jurisdictions of Washington, DC, and Maryland, the waiting period after such offenses is only five years.⁷ The *Washington Post* profiled a Virginia fam-

ily negatively affected by the ten-year waiting period, and the *Post* also wrote an editorial urging Virginia to revisit the law.⁸ The profiled family has been lobbying members of the Assembly, so it is possible a bill may be introduced.

Endnotes:

- 1 Va. Code Ann. § 63.2-1300.
- 2 2017 Va. Acts ch. 199 (to be codified at Va. Code Ann. § 63.2-1300(C)).
- 3 See *id.* (“when it is in the best interest of the child due to factors *such as . . .*”) (emphasis added).
- 4 See *id.* (to be codified at Va. Code Ann. § 63.2-1302(B)).
- 5 2017 Va. Acts ch. 634 (to be codified at Va. Code Ann. § 2.2-1209).
- 6 Va. Code Ann. §§ 63.2-901.1 & 63.2-1719.
- 7 See D.C. Code § 4-1305.06; Md. Code Regs. 07.02.25.04.
- 8 Victoria St. Martin, *Because of a Criminal Record, a Va. Woman Can’t Adopt Now. She’s Fighting the State’s 10-Year Ban*, Wash. Post (Mar. 12, 2017), https://www.washingtonpost.com/local/a-drug-offender-whos-done-her-time-still-cant-adopt-shes-battling-the-ban/2017/03/11/e8f2fa5e-fe2a-11e6-99b4-9e613afeb09f_story.html; Editorial, *Virginia’s Arbitrary Barrier to Adoption*, Wash. Post (Mar. 14, 2017), https://www.washingtonpost.com/opinions/virginias-arbitrary-barrier-to-adoption/2017/03/14/dd4c6714-0837-11e7-b77c-0047d15a24e0_story.html.



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