WEST VIRGINIA CODE CHAPTER 48 ARTICLE 23

WV Legislature

PART 1. GENERAL PROVISIONS.

§48-23-101. Policy regarding persons obtaining identifying information after adoption.

(a) Adoption is based upon the legal termination of parental rights and responsibilities of birth parents and the creation of the legal relationship of parent and child between an adoptee and his or her adoptive parents. These legal and social premises underlying adoption must be maintained. The Legislature recognizes that some adults who were adopted as children have a strong desire to obtain identifying information about their birth parents while other such adult adoptees have no such desire. The Legislature further recognizes that some birth parents have a strong desire to obtain identifying information about their biological children who were surrendered for adoption, while other birth parents have no such desire.

(b) The Legislature fully recognizes the right to privacy and confidentiality of:

(1) Birth parents whose children were adopted;

(2) The adoptees; and

(3) The adoptive parents.

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§48-23-102. Legislative purpose.

The purpose of this article is to:

(1) Set up a mutual consent voluntary adoption registry where birth parents and adult adoptees may register their willingness to the release of identifying information to each other;

(2) To provide for the disclosure of such identifying information to birth parents or adoptees, or both, through a social worker employed by a licensed adoption agency, provided each birth parent and the adult adoptee voluntarily registers on his or her own; and

(3) To provide for the transmission of nonidentifying health and social and genetic history to the adult adoptees, birth parents and other specified persons; and

(4) To provide for disclosure of identifying information for cause shown.

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PART 2. DEFINITIONS

§48-23-201. Applicability of definitions.

For the purposes of this article the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

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§48-23-202. Adoptee defined.

"Adoptee" means a person who has been legally adopted in the State of West Virginia.

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§48-23-203. Adoption defined.

"Adoption" means the judicial act of creating the relationship of parent and child where it did not exist previously.

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§48-23-204. Adult defined.

"Adult" means a person who is eighteen years of age or more.

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§48-23-205. Agency defined.

"Agency" means any public or voluntary organization licensed or approved pursuant to the laws of any jurisdiction within the United States to place children for adoption.

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§48-23-206. Genetic and social history defined.

"Genetic and social history" means a comprehensive report, when obtainable, on the birth parents, siblings to the birth parents, if any, other children of either birth parent, if any, and parents of the birth parents, which shall contain the following information:

(1) Medical history;

(2) Health status;

(3) Cause of and age at death;

(4) Height, weight, eye and hair color;

(5) Ethnic origins;

(6) Where appropriate, levels of educational and professional achievement; and

(7) Religion, if any.

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§48-23-207. Health history defined.

"Health history" means a comprehensive report of the child's health status at the time of placement for adoption and medical history, including neonatal, psychological, physiological and medical care history.

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§48-23-208. Mutual consent voluntary adoption registry or registry defined.

"Mutual consent voluntary adoption registry" or "registry" means a place provided for herein where eligible persons as described in section 23-501 may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in this article.

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§48-23-209. Putative father defined.

"Putative father" means any man not deemed or adjudicated under the laws of a jurisdiction of the United States to be the father of genetic origin of a child and who claims or is alleged to be the father of genetic origin of such child.

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§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.

The Department of Human Services shall establish and maintain the mutual consent voluntary adoption registry, except that the department may contract out the function of establishing and maintaining the registry to a licensed voluntary agency with expertise in providing post-legal adoption services, in which case the agency shall establish and maintain the registry that would otherwise be operated by the department.

The secretary of the Department of Human Services shall promulgate and adopt such rules as are necessary for implementing this article.

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PART 4. USE OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.

Use of the mutual consent voluntary adoption registry for obtaining identifying information about birth parents and adult adoptees is available to birth parents and adult adoptees, except as otherwise limited by section 23-402.

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§48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.

(a) A birth parent is not eligible to use the registry until his or her child who was adopted is eighteen years of age or older.

(b) An adult adoptee is not eligible to use the registry if he or she has a sibling in his or her adoptive family who is under the age of eighteen years.

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§48-23-403. Registration by a birth father.

A birth father may register if:

(1) He was named as the father in the original sealed birth certificate;

(2) He legitimated or formally acknowledged the child as provided by law; or

(3) He signed a voluntary abandonment and release for the child's adoption as provided by law.

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§48-23-404. Registration by a birth parent who used an alias in terminating parental rights.

If a birth parent used an alias name in terminating his or her parental rights, and the alias is listed in the original sealed birth record, that birth parent may register if the agency, organization, entity or person that placed the child for adoption, certifies to the court that the individual seeking to register used the alias name set forth in the original sealed birth certificate.

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PART 5. OPERATION OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-501. Prerequisites to disclosure of identifying information.

The adult adoptee and each birth parent may voluntarily, without having been contacted by any employee or agent of the entity operating the registry, place his or her name in the appropriate registry before any disclosure or identifying information can be made. A qualified person may register by submitting a notarized affidavit to the appropriate registry stating his or her name, address and telephone number and his or her willingness to be identified solely to the other relevant persons who register. No registration may be accepted until the prospective registrant submits satisfactory proof of his or her identity in accord with the provisions specified in section 23-601 of this article. The failure of any of the three above described persons to file a notarized affidavit with the registry for any reason, including death or disability, precludes the disclosure of identifying information to those relevant persons who do register.

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§48-23-502. Counseling of registrants.

Upon registering, the registrant shall participate in not less than one hour of counseling with a social worker employed by the entity that operates the registry, except if a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry. When an eligible person registers concerning an adoption that was arranged through an agency which has not merged or otherwise ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify by certified mail the agency which handled the adoption within ten business days after the date of registration.

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§48-23-503. Cases where disclosure of identifying information cannot occur.

In any case where the identity of the birth father was unknown to the birth mother, or where the administrator learns that one or both of the birth parents are deceased, this information shall be shared with the adult adoptee. In these kinds of cases, the adoptee will not be able to obtain identifying information through the registry, and he or she would be told of his or her right to pursue whatever right otherwise exists by law to petition a court to release the identifying information.

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§48-23-504. Matching and disclosure procedures.

(a) Each mutual consent voluntary adoption registry must be operated under the direction of an administrator.

(b) A person eligible to register may request the administrator to disclose identifying information by filing an affidavit which sets forth the following:

(1) The current name and address of the affiant;

(2) Any previous name by which the affiant was known;

(3) The original and adopted names, if known, of the adopted child;

(4) The place and date of birth of the adopted child; or

(5) The name and address of the adoption agency or other entity, organization or person placing the adopted child, if known.

(c) The affiant shall notify the registry of any change in name or location which occurs subsequent to his or her filing the affidavit. The registry has no duty to search for an affiant who fails to register his or her most recent address.

(d) The administrator of the mutual consent voluntary adoption registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents. Such processing shall include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match.

(e) The administrator shall determine that there is a match when the adult adoptee and the birth mother or the adult adoptee and the birth father have each filed affidavits with the mutual consent voluntary adoption registry and have each received the counseling required in section 23-502.

(f) When a match has taken place, the department shall directly notify all parties through a direct and confidential contact. The contact shall be made by an employee or agent of the agency receiving the assignment and shall be made face to face, rather than by mail, telephone or other indirect means. The employee or agent shall be a trained social worker who has expertise in post-legal adoption services.

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§48-23-505. Retention of data by the registry.

Any affidavits filed and other information collected shall be retained for ten years following the date of registration by any qualified person to which the information pertains. Any qualified person who registers may renew his or her registration for ten additional years within one hundred eighty days prior to the last day of ten years from the date of initial registration.

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§48-23-506. Scope of information obtained by the mutual consent voluntary adoption registry.

A mutual consent voluntary adoption registry shall obtain only information necessary for identifying a birth parent or adult adoptee and in no event shall obtain information of any kind pertaining to the adoptive parents, any siblings to the adult adoptee who are children of the adoptive parents, the income of anyone and reasons for adoptive placement.

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§48-23-507. Fees for operations of the mutual consent voluntary adoption registry.

All costs for establishing and maintaining a mutual consent voluntary adoption registry shall be obtained through user's fees charged to all persons who register.

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PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

§48-23-601. Compilation of nonidentifying information on health history and social and genetic history.

(a) Prior to placement for adoption, the court shall require that the licensed adoption agency or, where an agency is not involved, the person, entity or organization handling the adoption, shall compile and provide to the prospective adoptive parents a detailed written health history and genetic and social history of the child. These histories must exclude information that would identify birth parents or members of a birth parent's family. The histories must be set forth in a document that is separate from any document containing such identifying information.

(b) The court, or an agency designated by the court, or judge thereof, shall provide to an agency, person, or organization handling the adoption the forms which must be utilized in the acquisition of the above-described detailed nonidentifying written health history and genetic and social history of the child. If the records cannot be obtained, the court shall make specific findings as to why the records are unobtainable.

(c) Records containing such nonidentifying information and which are set forth on a document described in subsection (a) above, separate from any document containing identifying data:

(1) Shall be retained by the clerk of the court for ninety-nine years; and

(2) Shall be available upon request, throughout the time specified in subdivision (1) of this subsection together with any additional nonidentifying information which may have been added on health or on genetic and social history, but which excludes information identifying any birth parent or member of a birth parent's family, or the adoptee or any adoptive parent of the adoptee, to the following persons only:

(A) The adoptive parents of the child or, in the event of death of the adoptive parents, the child's guardian;

(B) The adoptee upon reaching the age of eighteen;

(C) In the event of the death of the adoptee, the adoptee's spouse if he or she is the legal parent of the adoptee's child or the guardian of any child of the adoptee;

(D) In the event of the death of the adoptee, any progeny of the adoptee who is age eighteen or older; and

(E) The birth parent of the adoptee.

(d) The person requesting nonidentifying health history and genetic and social history shall pay the actual and reasonable costs of providing that information. This provision requiring

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payment of costs is subject to sections of this article that provide for the adoptee to obtain information by petitioning the court.

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PART 7. PROHIBITED CONDUCT.

§48-23-701. Prohibited conduct.

(a) No person, agency, entity or organization of any kind, including, but not limited to, any officer or employee of this state and any employee, officer or judge of any court of this state, may disclose any confidential information relating to an adoption except as provided in this article or pursuant to a court order. Any employer who knowingly or negligently allows any employee to disclose information in violation of this article is subject to the penalties provided in subsection (b) of this section, together with the employee who made any disclosure prohibited by this law.

(b) Any person, agency, entity or organization of any kind who discloses information in violation of this law is liable to the parties so injured in an action to recover damages in respect thereto.

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PART 8. NONDISCLOSURE OF REGISTRY INFORMATION.

§48-23-801. Nondisclosure.

(a) Notwithstanding any other provision of law, the information acquired by any registry may not be disclosed under any sunshine or freedom of information legislation, rules or practice.

(b) Notwithstanding any other provision of law, no person, group of persons, or entity, including an agency, may file a class action to force the registry to disclose identifying information.

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