

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1941

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ENROLLED

SENATE BILL No. 128

(By Mr. Randolph, W. President)

PASSED March 7 1941

In Effect 90 days from Passage



ENROLLED

**Senate Bill No. 128**

(BY MR. RANDOLPH, MR. PRESIDENT)

[Passed March 7, 1941; in effect ninety days from passage.]

AN ACT to amend and reenact article four, chapter forty-eight  
of the code of West Virginia, one thousand nine hundred  
thirty-one, relating to adoption.

*Be it enacted by the Legislature of West Virginia:*

That article four, chapter forty-eight of the code of West  
Virginia, one thousand nine hundred thirty-one, be amended  
and reenacted to read as follows:

**Article 4. Adoption.**

Section 1. *Jurisdiction.* Juvenile courts shall have ex-  
2 clusive original jurisdiction over all proceedings in-  
3 stituted under the provisions of this article.

Sec. 2. *Persons Who May Adopt.* Any adult person  
2 who is a resident of this state may petition for permission  
3 to adopt a minor child. No petition by a married person  
4 shall be granted unless the husband or wife joins therein,  
5 except that when the petitioner is married to the natural  
6 father or mother of the child, joinder by such father or  
7 mother shall not be necessary.

Sec. 3. *Venue; Form of Petition.* The petition shall be  
2 filed in the juvenile court of the county in which the  
3 petitioner resides. The judge of such court may, if upon  
4 investigation it is deemed desirable, transfer the cause  
5 to the juvenile court of some other county.  
6 The petition shall be made on forms prescribed and  
7 furnished by the state department of public assistance.

Sec. 4. *Social Investigation.* Upon the filing of a  
2 petition for the adoption of any child the court shall  
3 cause an investigation to be made of the former environ-  
4 ment and antecedents of the child, for the purpose of  
5 ascertaining whether he is a proper subject for adoption,  
6 and of the home of the petitioner to determine whether  
7 it is a suitable home for the child. Within five days

8 after the filing of a petition, a copy thereof shall be sent  
9 by registered mail to the state department of public  
10 assistance. The investigation shall be made by the de-  
11 partment or by some agency selected by it. The results  
12 of the investigation shall be embodied in a full written  
13 report, which shall be submitted to the court at or prior  
14 to the hearing upon the petition, and shall be filed with  
15 the records of the proceeding and become a part thereof.  
16 The report shall contain a full statement of the facts  
17 found in the investigation, including such information as  
18 is necessary for submission to the state registrar of vital  
19 statistics under the provisions of section nine of this  
20 article, and a recommendation as to the desirability of  
21 the adoption.

Sec. 5. *Consent.* Except as otherwise provided in this  
2 section, no adoption shall be permitted except with the  
3 acknowledged written consent of the parents or guardian  
4 of a child, or of the mother of a child born out of wed-  
5 lock. The consent of a minor parent shall be effective  
6 only when concurred in by the state department of public  
7 assistance. In the case of a child twelve years old, the

8 consent of such child shall also be required and must be  
9 given in writing in the presence of the court. If the  
10 parental rights have been terminated by order of a court,  
11 or by other legal means, and the care, custody, and guard-  
12 ianship of the child have been given to some authorized  
13 agency, the consent of such agency must be obtained be-  
14 fore adoption is allowed. If the child has no parent  
15 or guardian and is not under the guardianship of an  
16 approved public or private child-placing agency, consent  
17 must be given by the state department of public assistance  
18 before adoption is allowed.

Sec. 6. *Hearing.* Upon the filing of a petition for  
2 adoption, the court shall appoint a time and place for the  
3 hearing, allowing reasonable time of not less than sixty  
4 days for the prior investigation required by section four  
5 of this article. The court may in its discretion postpone  
6 the hearing from time to time. The petitioner and the  
7 child to be adopted, if twelve years old, shall be required  
8 to attend the hearing in person, but a younger child  
9 shall not be required to attend unless the court so orders.  
10 In contested cases the child, if he has no other counsel,

11 shall be represented by the prosecuting attorney of the  
12 county in which the hearing is held. If in any case, how-  
13 ever, the state department of public assistance deems it  
14 to be in the best interests of the child, it may appoint  
15 special counsel instead of the prosecuting attorney to  
16 represent the child.

Sec. 7. *Order of Adoption.* If upon the hearing the  
2 court is satisfied that the child is suitable for adoption,  
3 that the facts stated in the petition are true, and that all  
4 legal requirements relating to adoption have been com-  
5 plied with, it may, at any time after the child has lived  
6 with the petitioner for one year, enter an order setting  
7 forth all the jurisdictional facts and providing that from  
8 and after the date thereof the child shall be deemed to  
9 all legal intents and purposes the child of the petitioners.  
10 In the order the name of the child may, if so desired, be  
11 changed to that of the parent or parents by adoption.

Sec. 8. *Effect of Adoption; Descent of Property.* By  
2 such order the child shall be to all intents and purposes  
3 the child and legal heir of the adopting parent or parents,  
4 entitled to all the rights and privileges and subject to

5 all the obligations of a child of such parent or parents  
6 born in lawful wedlock. On consummation of the adop-  
7 tion, the natural parents shall be divested of all legal  
8 rights and obligations in respect to such child and the  
9 child shall be free of all legal obligations of obedience and  
10 maintenance in respect to them. If, however, the adopt-  
11 ing parent is married to one of the natural parents of the  
12 child, the relation of the child to such natural parent  
13 shall be in no way altered.

14 The adopted child shall not be capable of taking prop-  
15 erty expressly limited to the heirs of the body of the  
16 adopting parent or parents, nor property coming from the  
17 collateral kindred of such adopting parent or parents  
18 by right of representation. A child shall not by adoption  
19 lose his right to inherit from his natural parents or  
20 kindred. Upon the death of the adopting parent or  
21 parents and the subsequent death of the adopted child,  
22 without issue and without having disposed, by deed  
23 during his life or by will upon his death, of any property  
24 which came to him from the adopting parent or parents,  
25 such property shall descend to and be distributed among

26 the next of kin of such parent or parents and shall not  
27 descend to the next of kin of the adopted child.

Sec. 9. *Notice to Registrar of Vital Statistics.* After  
2 entry of the order of adoption the clerk of the court shall  
3 immediately report to the state registrar of vital statistics  
4 such facts in regard to the adoption as may be required by  
5 the registrar.

Sec. 10. *Records of Adoption Proceedings.* All records  
2 of proceedings in adoption cases and all papers and records  
3 relating to such proceedings shall be kept in a separate  
4 file and shall not be open to inspection or copy by anyone  
5 other than the parties of record or their representatives,  
6 except upon order of the court for good cause shown.  
7 No person in charge of adoption records shall disclose the  
8 names of the adopting parent or parents unless ordered  
9 to do so by the court.

Sec. 11. *Annulment of Adoption.* Failure to comply  
2 in adoption proceedings with the essential requirements  
3 of this article shall be ground for annulment of the order  
4 of adoption at any time within two years after the order  
5 was entered. Any person who was a party to the adoption



6 proceedings, or who claims property through or under one  
7 who was a party, may apply by petition to the court in  
8 which the adoption order was entered for annulment of  
9 the order. The court shall fix a time for hearing and shall  
10 cause notice thereof to be given to the adopting parents  
11 and to the adopted child if he is twelve years old. Upon  
12 the hearing the court may in its discretion annul or  
13 affirm the adoption. Any order for adoption heretofore  
14 or hereafter made by a court of record of this state shall  
15 be binding on all persons and in all proceedings after  
16 two years from the date of entry thereof, and any person  
17 who was a party to the proceedings or who makes claim  
18 to property through or under one who was a party, shall  
19 not thereafter be allowed to attack the validity of the  
20 adoption proceedings.

Sec. 12. *Adoption of Adults.* Any adult person who is  
2 a resident of West Virginia may petition the juvenile  
3 court for permission to adopt one who has reached the  
4 age of 21 years, and, if desired, to change the name of  
5 such person. The consent of the person to be adopted is  
6 the only consent necessary. The order of adoption shall

7 create the same relationships between the adopting parent  
8 or parents and the person adopted and the same rights  
9 of inheritance as in the case of an adopted minor child.  
10 If a change in name is desired, the order of adoption  
11 shall so state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*E. H. McKown*

Chairman Senate Committee

*Leon Rice*

Chairman House Committee

Originated in the

*Senate*

Takes effect

*90 days from*

passage

*W. Lee Watkins*

Clerk of the Senate

*Joseph*  
Clerk of the House of Delegates

*Byron B. Randolph*  
President of the Senate

*Malcolm R. Arnold*  
Speaker House of Delegates

The within

*approved*

this the

*14*

day of

*March*

, 1941.

*Matthew M. Neely*

Governor.

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Filed in the office of the Secretary of State  
of West Virginia. MAR 17 1941

Wm. S. O'BRIEN,  
Secretary of State

MAR 17 1941