

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1943

House Bill No. 30

ENROLLED

HOUSE BILL No. 30

(By Mr. Callahan)

PASSED March 5, 1943

In Effect from Passage

Passed by House of Delegates March 12, 1943,
notwithstanding governor's objections; Mr.
Callahan to Senate.

Atsliff
Clerk, House of Delegates

3/12. Eng. H. B. No. 30 passed by the Senate, notwithstanding the objections of the Governor, by a majority vote of all the members elected to the Senate, to have effect from passage.
Mr. Harmer to the House. a. Hale Watkins
Clerk of the Senate.

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House Bill No. 30

(BY MR. CALLAHAN)

[Passed March 5, 1943; in effect 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, as last amended and reenacted by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-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, as last amended and reenacted by chapter twenty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-one, to read as follows:

Section 1. *Who May Adopt; Petition to Circuit Court;*

2 *Consent of Parents.*—It shall be lawful for any person
3 not married, or any husband with his wife's consent, or
4 any wife with her husband's consent, or any husband and

5 wife jointly, to petition the circuit court of the county
6 wherein he, she or they may reside, or the judge of such
7 court in vacation, for permission to adopt any minor
8 child, and also to petition for a change of name of such
9 child: *Provided*, That if such child be of the age of twelve
10 years, or over, the written consent of such child to such
11 adoption, given in the presence of the judge having juris-
12 diction thereof, must be obtained and presented with the
13 petition, and also the written consent, duly acknowl-
14 edged, of the parent or parents, if living; or, if both par-
15 ents should be dead or unknown, or insane, or shall have
16 abandoned the child sought to be adopted, or have been de-
17 prived of the custody of the person of such child by law,
18 then and in such case, the written consent, acknowledged
19 as aforesaid, of the legal guardian of such child or those
20 having at the time the legal custody of the child shall
21 be obtained and so presented. And if there be no legal
22 guardian nor any person having the legal custody of the
23 child, then such consent must be obtained from some
24 discreet and suitable person appointed by the court or
25 judge thereof to act as the next friend of such child in

26 the adoption proceedings. No such petition shall be made
27 or presented until after the child sought to be adopted
28 shall have lived in the home of the adopting parent or
29 parents for a period of six months.

Sec. 2. *Contents of Petition; Age of Petitioners.*—Such
2 petition shall set forth the name, age and place of resi-
3 dence of the petitioner or petitioners, and of the child, and
4 the name by which the child shall be known; whether
5 such child be possessed of any property, and a full de-
6 scription of the same, if any; whether such child has
7 either father or mother, or both, and if he, she or they are
8 alive, then the name or names, and place of residence of
9 such father or mother, or if such be the fact, that the
10 same are unknown to the petitioner or petitioners.

11 The persons petitioning as aforesaid shall be at least
12 fifteen years older than the child sought to be adopted,
13 and the petition shall be duly verified according to law.

Sec. 3. *Proceedings on Petition; Appointment of Next*
2 *Friend; Contents of Decree.*—Upon the presentation of
3 such petition to the court, or judge thereof in vacation,
4 the same shall be ordered filed with the clerk of such

5 court, and the court or judge thereof shall appoint
6 a day for the hearing of such petition and the examina-
7 tion under oath of the parties in interest. And the
8 court or judge thereof may adjourn the hearing of such
9 petition or the examination of the parties in interest
10 from time to time, as the nature of the case may re-
11 quire. Between the time of the filing of the petition for
12 adoption and the hearing thereon, the court may cause a
13 discreet inquiry to be made respecting the child, for the
14 purpose of ascertaining whether such child is a proper
15 subject for adoption and shall cause a discreet inquiry to
16 be made respecting the home of the petitioner or petition-
17 ers to determine whether it is a suitable home for such
18 child. Such inquiry shall be made by any suitable person
19 or agency designated by the court, and the results thereof
20 shall be embodied in a full written report and shall be
21 submitted to the court at or prior to the hearing upon
22 the petition and shall be filed with the records of the pro-
23 ceeding and become a part thereof. If it shall be neces-
24 sary, under the provisions of this article, that a discreet
25 and suitable person shall be appointed to act as the next

26 friend of the child sought to be adopted, then and in that
27 case the court or judge thereof shall order a notice of
28 the petition and of the time and place when and where the
29 appointment of next friend will be made, to be published
30 in some newspaper of general circulation in the county
31 where such court is located, once a week for two consecu-
32 tive weeks; and at the time and place so named and
33 upon due proof of the publication of such notice, the
34 court or judge thereof shall make such appointment, and
35 shall thereupon assign a day for the hearing of such
36 petition and the examination of the parties interested.
37 Upon the day so appointed the court or judge thereof shall
38 proceed to a full hearing of the petition and examination
39 of the parties in interest, under oath and of such other
40 witnesses as the court or the judge thereof may deem
41 necessary to fully develop the standing of the petitioners
42 and their responsibility, and the status of the child
43 sought to be adopted; and if the court or judge thereof
44 shall be of the opinion from the testimony that the facts
45 stated in the petition are true, and if upon examination
46 the court or the judge thereof is satisfied that the peti-

47 tioner is, or the petitioners are, of good moral character,
48 and of respectable standing in the community, and are
49 able properly to maintain and educate the child sought
50 to be adopted, and that the best interests of the child
51 would be promoted by such adoption, then and in such
52 case the court or judge thereof shall make a decree re-
53 citing at length the facts proved and the name by which
54 the child shall thereafter be known, and declaring and
55 adjudging that from the date of such decree, the rights,
56 duties, privileges and relations, theretofore existing be-
57 tween the child and his or her parent or parents, shall be
58 in all respects at an end, excepting the right of inheritance,
59 and that the rights, duties, privileges and relations, be-
60 tween the child and his or her parent or parents by
61 adoption, shall thenceforth in all respects be the same,
62 including the right of inheritance, as if the child had
63 been born to such adopting parent or parents in lawful
64 wedlock, except only as otherwise provided in this ar-
65 ticle.

Sec. 4. *Recording of Decree, Fees of Clerk.*—The decree

2 shall be recorded in a book kept for that purpose, and

3 the clerk shall receive the same fees as in other cases in
4 the circuit court or juvenile court, as the case may be.
5 All records of proceedings in adoption cases and all
6 papers and records relating to such proceedings shall be
7 kept in a sealed file and shall not be open to inspection
8 or copy by anyone other than the parties of record or their
9 legal representatives, except upon court order for good
10 cause shown. No person in charge of adoption records
11 shall disclose the names of the adopting parent or par-
12 ents or adopted child except by court order. Immediately
13 upon the entry of such a decree of adoption, the court
14 shall direct the clerk thereof forthwith to make and
15 deliver to the state registrar of vital statistics a certifi-
16 cate under the seal of said court, showing:

17 (1) The date and place of birth of the adoptee, if
18 known;

19 (2) The names of the natural parents of the adoptee, if
20 known;

21 (3) The name by which said child has previously been
22 known;

23 (4) The names and addresses of the adopting parents;

24 (5) The name by which the child is to be thereafter
25 known; and

26 (6) Such other information from the record of said
27 adoption proceedings as may be required by the law of
28 this state relating to vital statistics and as may enable the
29 state registrar of vital statistics to carry out the duty im-
30 posed upon him by this section.

31 Upon receipt of said certificate the said registrar of
32 vital statistics shall forthwith issue and deliver by mail
33 to the adopting parents at their last known address a
34 birth certificate in form required by law, except that the
35 name of the adoptee shown in said certificate shall be
36 the name given him by the decree of adoption.

Sec. 5. *Effect of Decree as to Relations of Parent and*
2 *Child and Rights of Inheritance.*—Upon the entry of such
3 decree of adoption, the parents of the child, if living,
4 shall be divested of all legal rights and obligations in
5 respect to the child, and the child shall be free from
6 all legal obligations of obedience or otherwise to the
7 parents, and the adopting parent or parents of the child
8 shall be invested with every legal right in respect to

9 obedience and maintenance on the part of the child,
10 as if such child has been born to them in lawful wedlock;
11 and the child shall be invested with every legal right,
12 privilege, obligation and relation in respect to educa-
13 tion, maintenance, and the right of inheritance in the
14 estate of such adopting parent or parents as if born
15 to him or them in lawful wedlock; except that such child
16 shall not be capable of taking property expressly lim-
17 ited to the heirs of the body of the adopting parent or
18 parents, nor property coming from the lineal or colla-
19 teral kindred of such adopting parent or parents by
20 right of representation: *Provided*, That the death of the
21 adopting parent or parents and the subsequent death of
22 the child so adopted without issue, the property of such
23 adopting deceased parent or parents shall descend to or
24 be distributed among the next of kin of such parent or
25 parents, and not the next of kin of the child adopted:
26 *Provided further*, That if such adopting parent or parents
27 shall have another child or children, theirs by birth,
28 then, and in that case, the adopted child shall share the
29 inheritance with the child or children born to the adopt-

30 ing parent or parents, and in such case also, such adopted
 31 child and such child or children by birth shall respectively
 32 inherit from and through each other the property and
 33 estate of the adopting parent or parents, as if all had been
 34 children of such parent or parents born in lawful wedlock.
 35 If, however, the adopting parent is, at the time of adop-
 36 tion, married to one of the natural parents of the child, the
 37 relation of the child to such natural parent shall be in no
 38 way altered or affected by the provisions of this act.

Sec. 6. *Revocation of Adoption by Judicial Pro-*
 2 *ceedings by Child Itself at Majority.*—A parent
 3 or guardian of a minor, when a minor is adopted
 4 under the provisions of this article, who had no no-
 5 tice of the proceedings, may, at any time within a
 6 year after receiving notice thereof, apply by petition
 7 to the circuit court in which the petition mentioned
 8 in the first section was filed, praying that the adoption
 9 may be vacated. The court applied to shall fix a date for
 10 a hearing, shall cause notice thereof to be given to the
 11 person or persons who were permitted to adopt such
 12 minor and, at the time so fixed, shall hear the petitioner

13 and all parties interested, and may vacate or affirm the
14 adoption in its discretion. Any party interested may ap-
15 peal to the supreme court of appeals from the decision
16 of the circuit court in the matter, as in cases of appeals
17 in chancery matters. When any minor has been adopted,
18 he may, within one year after becoming of age, sign,
19 seal and acknowledge before proper authority, in the
20 county in which the decree of adoption was made, a
21 dissent from such adoption, and file such instrument of
22 dissent in the office of the clerk of the county court of
23 such county, and such clerk shall record and index the
24 same. Upon the filing of such instrument of dissent the
25 adoption shall be vacated.

Sec. 7. *Adoption of Adults.*—Any adult person who is
2 a resident of West Virginia may petition the circuit court
3 for permission to adopt one who has reached the age of
4 twenty-one years or over, and, if desired, to change the
5 name of such person. The consent of the person to be
6 adopted shall be the only consent necessary. The order
7 of adoption shall create the same relationship between
8 the adopting parent or parents and the person adopted

9 and the same rights of inheritance as in the case of an
10 adopted minor child. If a change in name is desired, the
11 adoption order shall so state.

Sec. 8. *Jurisdiction of Courts.*—In counties where the
2 circuit court does not sit as a juvenile court, concurrent
3 jurisdiction in adoption proceedings is hereby extended to
4 such juvenile courts.

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

Ray Z. Givison

Chairman Senate Committee

Frank H. Potoff

Chairman House Committee

Originated in the

House of Delegates

Takes effect

from

passage.

W. Lee Watkins

Clerk of the Senate

J. A. Bliff

Clerk of the House of Delegates

James Paule

President of the Senate

John E. Amos

Speaker House of Delegates

The within _____ this the _____

day of _____, 1943.

Governor.