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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

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ENROLLED

Committee Substitute for
SENATE BILL NO. 108

(By Mr. *Moreland original sponsor*)

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PASSED *March 10,* 1976

In Effect *ninety days from* Passage

FILED IN THE OFFICE
JAMES R. MCCARTNEY
SECRETARY OF STATE

THIS DATE 3/23/76

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 108
(MR. MORELAND, *original sponsor*)

[Passed March 10, 1976; in effect ninety days from passage.]

AN ACT to amend and reenact sections one and six, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article three, chapter forty-nine of said code, all relating to adoptions and persons to whom notice is required to be given or consent obtained; revocation of adoptions; and the relinquishment of children to child welfare agencies.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article three, chapter forty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

§48-4-1. Definition; who may adopt; petition; consent required; when notice required.

- 1 (a) As used in this article, the term "determined
- 2 father" means any person who:
- 3 (1) Has been found guilty under the provisions of
- 4 article seven, chapter forty-eight of this code; or
- 5 (2) Has acknowledged his parental status by con-
- 6 tributing to the child's support, by living with the mother,
- 7 at the time of conception, or by admitting paternity by
- 8 any means.

9 (b) It shall be lawful for any person not married, or
10 any husband with his wife's consent, or any wife with her
11 husband's consent, or any husband and wife jointly, to
12 petition the circuit court or any other court of record hav-
13 ing jurisdiction of adoption proceedings of the county
14 wherein he, she or they may reside, or the judge of such
15 court in vacation, for permission to adopt **any minor**
16 child, and also to petition for a change of name of such
17 child. Consent to the adoption of a minor child shall
18 be required and obtained as follows:

19 (1) In the case of a child sought to be adopted, the
20 written consent, duly acknowledged, of the mother and
21 father (in the case of an illegitimate child, the mother
22 and the determined father) or the surviving parent of
23 such child sought to be adopted must be obtained and
24 presented with the petition: *Provided*, That, if the mother
25 and father (in the case of an illegitimate child, the
26 mother and the determined father) are living and one is
27 insane or has abandoned the child sought to be adopted,
28 only the consent of the other parent shall be **required**,
29 but the parent who is alleged to have abandoned the child
30 must be personally served, if the determined father re-
31 sides within the state, with a copy of the petition and
32 notice of the date, time and place of the hearing on said
33 petition at least twenty days prior to the date set for the
34 hearing; and if after due diligence personal service can-
35 not be obtained, or if the determined father resides outside
36 the state, then the copy of the petition and the notice of
37 the hearing may be sent by registered mail to the last
38 known address of such abandoning parent, such service
39 to be complete upon mailing. If both parents are either
40 dead, unknown, insane, have abandoned the child sought
41 to be adopted or have been deprived of the custody of the
42 person of such child by law, then and in such case, the
43 written consent, acknowledged as aforesaid, of the legal
44 guardian of such child or those having at the time the
45 legal custody of the child shall be obtained and so
46 presented, and if there be no legal guardian nor any
47 person having the legal custody of the child, then such
48 consent must be obtained from some discreet and suitable

49 person appointed by the court or judge thereof to act as
50 the next friend of such child in the adoption proceedings.

51 (2) In addition to the consent required in subdivision
52 (1) of this subsection, in any case where the child sought
53 to be adopted is twelve years of age or over, the written
54 consent of such child to such adoption, given in the
55 presence of the judge having jurisdiction thereof, must
56 also be obtained and presented before the entry of any
57 order of adoption, unless for extraordinary cause such is
58 waived by court order.

59 (c) No petition for an adoption shall be made or
60 presented until after the child sought to be adopted shall
61 have lived in the home of the adopting parent or parents
62 for a period of six months.

§48-4-6. Revocation of adoption.

1 (a) Except when the consent to such adoption has
2 been properly given by the department of welfare or a
3 licensed child welfare agency, as provided in section one,
4 article three, chapter forty-nine of this code, a parent or
5 guardian of a legitimate child, or the mother or determined
6 father or guardian of an illegitimate child who did not
7 consent to the adoption of such child, or any parent
8 including the determined father of an illegitimate child
9 entitled to notice as provided in subdivision (1) of section
10 one of this article who was not served with notice as
11 provided in said subdivision (1), may, at any time
12 within one year after learning of or having reasonable
13 opportunity to learn of the adoption, apply by petition to
14 the court in which the adoption was granted, praying
15 that the adoption be vacated. The court to which such
16 application is made shall fix a date and time for a hearing,
17 shall cause notice thereof to be given to the person or
18 persons who were permitted to adopt such minor, and, at
19 the time so fixed, shall hear the petitioner and all parties
20 interested, and may vacate or affirm the adoption in its
21 discretion. Any party interested may appeal to the
22 supreme court of appeals from the decision of the court
23 in the matter, as in other civil cases.

24 (b) When any minor has been adopted, he may, within
25 one year after becoming of age, sign, seal and acknowledge

26 before proper authority, in the county in which the order
27 of adoption was made, a dissent from such adoption, and
28 file such instrument of dissent in the office of the clerk of
29 the court which granted said adoption and the clerk of the
30 county commission of such county, and such clerks shall
31 record and index the same. Upon the filing of such in-
32 strument of dissent the adoption shall be vacated.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Private and public child welfare agencies; definition.

1 (a) Whenever a child welfare agency licensed to place
2 children for adoption or the state department of welfare
3 shall have been given the permanent care, custody and
4 guardianship of any child and the rights of the parents
5 of such child shall have been terminated by order of a
6 court of competent jurisdiction or by a legally executed
7 relinquishment of parental rights, the child welfare
8 agency or department of welfare may consent to the
9 adoption of such child pursuant to the statutes regulating
10 adoption proceedings. The parents or the surviving
11 parent of a legitimate child or the mother and the deter-
12 mined father of an illegitimate child or the survivor may
13 relinquish the child to a child welfare agency licensed
14 to place children for adoption, or to the department of
15 welfare, by a written statement acknowledged as deeds
16 are required to be acknowledged by law: *Provided*, That
17 if either of the parents of such child is under eighteen
18 years of age, such relinquishment shall not be valid unless
19 and until the same shall have been approved in writing by
20 a judge of a court having jurisdiction of adoption proceed-
21 ings in the county in which such parent may reside or in
22 which such relinquishment is made. Notwithstanding any
23 other provision in this article, no minor parent or parents
24 shall be required to go before any court in order to
25 execute a consent to the adoption of his, her, or their
26 child by an individual or individuals.

27 (b) As used in this article, the term "determined
28 father" means any person who:

29 (1) Has been found guilty under the provisions of
30 article seven, chapter forty-eight of this code;

31 (2) Has acknowledged his parental status by con-
32 tributing to the child's support, by living with the mother
33 at the time of conception, or by admitting paternity by
34 any means.

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

James L. Davis
Chairman Senate Committee

Clarence C. Chestnut
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. McElroy Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Bratherton Jr.
President of the Senate

Lewis T. M. Thawne
Speaker House of Delegates

The within approved this the 19th
day of March, 1976

Anda. Thawne Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/15/76

Time 2:00 p.m.