

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

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ENROLLED

Committee Substitute for

HOUSE BILL No. 1691

(By Mr. Sutton)

— ● —

PASSED April 9, 1977

In Effect ninety days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1691
(By MR. SATTES)

[Passed April 9, 1977; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article three, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to private and public child welfare agencies; procedure to terminate rights of natural father prior to adoption proceeding; petition; notice; service of process; grounds for termination; and hearing.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

§48-4-6. Revocation of adoption.

- 1 (a) A parent or guardian of a legitimate child, or the
- 2 mother or determined father or guardian of an illegitimate
- 3 child who did not consent to the adoption of such child, any
- 4 parent including the determined father of an illegitimate

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

23 (b) When any minor has been adopted, he may, within one
24 year after becoming of age, sign, seal and acknowledge before
25 proper authority, in the county in which the order of adoption
26 was made, a dissent from such adoption, and file such instru-
27 ment of dissent in the office of the clerk of the court which
28 granted said adoption and the clerk of the county commission
29 of such county, and such clerks shall record and index the
30 same. Upon the filing of such instrument of dissent the
31 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 shall
3 have been given the permanent care, custody and guardianship
4 of any child and the rights of the parents of such child shall
5 have been terminated by order of a court of competent juris-
6 diction or by a legally executed relinquishment of parental
7 rights, the child welfare agency or department of welfare may
8 consent to the adoption of such child pursuant to the statutes

9 regulating adoption proceedings. The parents or the surviving
10 parent of a legitimate child or the mother and the determined
11 father of an illegitimate child or the survivor may relinquish
12 the child to a child welfare agency licensed to place children
13 for adoption, or to the department of welfare, by a written
14 statement acknowledged as deeds are required to be acknowl-
15 edged by law: *Provided*, That if either of the parents of such
16 child is under eighteen years of age, such relinquishment shall
17 not be valid unless and until the same shall have been approved
18 in writing by a judge of a court having jurisdiction of adoption
19 proceedings in the county in which such parent may reside or
20 in which such relinquishment is made. Notwithstanding any
21 other provision in this article, no minor parent or parents shall
22 be required to go before any court in order to execute a consent
23 to the adoption of his, her, or their child by an individual
24 or individuals.

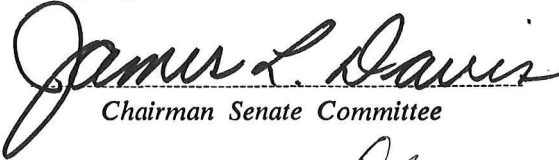
25 (b) Whenever the mother of an illegitimate child has execut-
26 ed a relinquishment pursuant to this section, and the natural
27 father has not executed a relinquishment, the child wel-
28 fare agency or state department of welfare may, by veri-
29 fied petition, seek to have said father's rights terminated
30 based upon the grounds of nonsupport of said chi'd,
31 abandonment, desertion, or neglect of said child, or that
32 said father is unfit to have custody of said child.

33 Upon the filing of the verified petition, the court shall set a
34 hearing on said petition. A copy of the petition and notice of
35 the date, time and place of the hearing on said petition shall be
36 personally served on said father at least twenty days prior to the
37 date set for the hearing; and if after due diligence personal
38 service cannot be obtained, or if the father resides outside the
39 state, the copy of the petition and the notice of the hearing shall
40 be sent by certified mail, return receipt requested, to the last
41 known address of said father. If the father cannot be actually
42 notified, as provided in this section, the hearing for termination
43 of parental rights may proceed and, upon proper proof, an
44 order may be entered terminating the father's parental rights,
45 subject to revocation by the determined father as provided in
46 section six, article four, chapter forty-eight of this code.

47 A petition under this section may be instituted in the
48 county where the child resides or where the child is living.

49 If the court finds that the said father is guilty of the alle-
50 gations set forth in the petition, the court shall enter an order
51 terminating said father's rights and shall award the full care,
52 custody and control of said child to the petitioner.

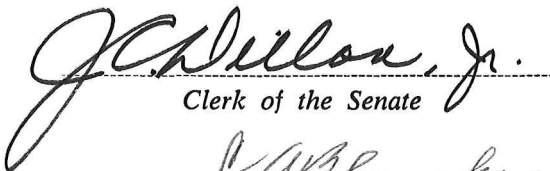
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee


Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 27
day of April, 1977.


Governor

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OFFICE
SECY. OF STATE

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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 27, 1977
Time 5:20 p.m.