

No. 1220

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

— ● —

## ENROLLED

*Com. Sub. for*  
HOUSE BILL No. *1220*

(By *Del. Albright & Del. Feinberg*)

— ● —

Passed *March 10,* 1984

In Effect *Ninety Days from* Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 1220**

**(By DELEGATE ALBRIGHT and DELEGATE FEINBERG)**

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**[Passed March 10, 1984; in effect ninety days from passage.]**

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AN ACT to amend and reenact 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 adoption procedures generally; defining terms; setting forth who may adopt; providing procedure for consent; when consent required; establishing that consent to adopt or relinquishment of parental rights authorizes person to consent to medical treatment of child; providing procedure for consent by infant; when consent or relinquishment may be revoked; exceptions; requirements of consent or relinquishment form; limiting fees to services rendered and requiring court approval of same; delivery of child for adoption; filing of petition; exception; order pendente lite; requirements of petition; providing for an appendix; establishing notice requirements; describing court procedures; recordation of order; prohibiting disclosure of the record except in certain instances; establishing when identifying and nonidentifying information may be disclosed; information forwarded to registrar of vital statistics; issuance of birth certificate; effect of order as to relations between parents and child as to rights of inheritance, including intestacy of adopted child; modifying certain terms to conform to new terminology;

setting forth procedure for revocation of adoption; providing for the adoption of adults; jurisdiction of courts; prohibiting certain contractual agreements; providing procedure for consent to adoption by child welfare agencies or the state department of human services; and establishing notice requirements when termination of parental rights are sought by such agency or department.

*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 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:

**ARTICLE 4. ADOPTION.**

**§48-4-1. Definitions.**

1 As used in this article, unless the context otherwise re-  
2 quires:

3 (a) A "legal father" is, before adoption, the male person  
4 having the legal relationship of parent to a child, (1) who  
5 is married to its mother at the time of conception; or (2) who  
6 is married to its mother at the time of birth of the child; or  
7 (3) who is the biological father of the child and who marries  
8 the mother before an adoption of the child.

9 (b) A "determined father" is, before adoption, a person  
10 (1) adjudicated to be the father of a child under the pro-  
11 visions of article seven of this chapter; or (2) who makes  
12 an affidavit stating that he is the father of a child and  
13 who is identified as the father by the mother in a like af-  
14 fidavit; or (3) who has, at his instance, been otherwise judi-  
15 cially determined to be the biological father of the child en-  
16 titled to parental rights with respect to the child.

17 (c) A "putative father" is, before adoption, a person  
18 (1) who is named by the mother as the biological father  
19 but who has not made any claim that he is the biological  
20 father of the child or that he is entitled to parental rights  
21 in any judicial proceeding to which the mother is or has been  
22 a party; or (2) who has made a claim in the adoption pro-

23 ceeding or in a judicial proceeding pending at the time of  
24 the adoption proceeding that he is the biological father of  
25 a child, which claim has not been adjudicated adversely to  
26 his interest.

27 (d) An "unknown father" is the biological father who,  
28 before adoption, is neither the legal father, determined father  
29 nor putative father of the child.

30 (e) A "birth mother" is the biological mother of the  
31 child;

32 (f) A "birth father" is the biological father of the child;  
33 and

34 (g) The "adoptive parents" or "adoptive mother" or "adop-  
35 tive father" shall mean those persons who, after adoption, are  
36 the mother and father of the child.

**§48-4-2. Who may adopt.**

1 Any person not married or any person, with his or her  
2 spouse's consent, or any husband and wife jointly, may petition  
3 a circuit court of the county wherein such person or persons  
4 reside for a decree of adoption of any minor child or person  
5 who may be adopted by the petitioner or petitioners under  
6 section thirteen of this article.

**§48-4-3. Consent.**

1 (a) The mother and legal father or determined father shall  
2 consent to the adoption by a writing acknowledged as in the  
3 case of deeds, unless the parental rights of such person have  
4 been previously terminated, abandoned or permanently relin-  
5 quished, or the person is under disability solely because of  
6 age. If the parental rights have been previously terminated,  
7 abandoned or permanently relinquished, the court shall so  
8 determine before awarding the decree of adoption. If the  
9 person is under disability, the court may decree the adoption  
10 if it determines (1) that the parental rights of the persons  
11 have been previously terminated, abandoned or permanently  
12 relinquished, (2) that the person is incurably insane, or (3)  
13 the disability arises solely because of age and an otherwise valid  
14 consent has been given.

15 (b) Any consent to adoption or relinquishment of parental  
16 rights shall authorize the prospective adopting party to consent  
17 to medical treatment of the child.

18 (c) If all persons entitled to parental rights of the child  
19 sought to be adopted are deceased or have been deprived of  
20 the custody of the person of such child by law, then and in  
21 such case, the written consent, acknowledged as aforesaid,  
22 of the legal guardian of such child or those having at the time  
23 the legal custody of the child shall be obtained and so pre-  
24 sented, and if there be no legal guardian nor any person having  
25 the legal custody of the child, then such consent must be ob-  
26 tained from some discreet and suitable person appointed by  
27 the court or judge thereof to act as the next friend of such  
28 child in the adoption proceedings.

29 (d) If one of the persons entitled to parental rights of  
30 the child sought to be adopted is deceased, only the consent  
31 or relinquishment of the surviving person entitled to parental  
32 rights shall be required.

**§48-4-4. Consent by infants.**

1 A consent signed by a person less than eighteen years  
2 of age shall be specifically reviewed and approved by the  
3 court. If it appears that the person giving such consent is  
4 under eighteen years of age at the time of the filing of the  
5 petition, a guardian ad litem shall be appointed to assure that  
6 the interests of the infant be protected. The court may re-  
7 quire the infant to appear in camera, to satisfy the court of  
8 the propriety of the consent, or require a deposition to be  
9 taken, but neither shall be a prerequisite to a valid decree  
10 of adoption.

**§48-4-5. Revocation of consent or relinquishment for adoption;  
when given; requirements; professional fees; itemization  
of fees.**

1 (a) Parental consent or relinquishment of legal custody  
2 for adoption purposes, if given prior to the expiration of  
3 seventy-two hours after the birth of the child, may be revoked  
4 by such parent within ten days after the birth of the child.  
5 Except where a court of competent jurisdiction finds that

6 such consent or relinquishment for adoption was obtained by  
7 fraud or duress, no consent or relinquishment of legal custody  
8 for adoption of a child, whether given by an adult or a minor,  
9 shall be revocable: *Provided*, That a relinquishment of legal  
10 custody for adoption of a child given by a minor to a licensed  
11 private child welfare agency or to the state department of  
12 human services shall be revocable unless the relinquishment  
13 was given in compliance with section one, article three,  
14 chapter forty-nine of the code: *Provided, however*, That the  
15 foregoing proviso shall not be construed as precluding a  
16 minor from consenting to the adoption of his or her child  
17 by an individual or individuals.

18 (b) No parental consent or relinquishment of legal custody  
19 for adoption purposes shall be valid unless it sets forth that  
20 the person executing the document has a legal right to revoke  
21 the same, and sets forth the method by which the same may  
22 be revoked, including the name and location of the person to  
23 contact in the event the person desires to exercise his or her  
24 right of revocation. Additionally, in the case of a birth  
25 mother, no such consent or relinquishment shall be valid  
26 unless it sets forth that she has been informed of the avail-  
27 ability of counseling services with respect to her decision  
28 and that she has also been informed of the services and  
29 assistance available to her if she chooses to keep her child.

30 (c) Any payment to physicians, attorneys, adoption agen-  
31 cies or to any other person involved in the adoption process  
32 shall be limited to cover fees from services rendered and such  
33 fees shall be approved by the court.

**§48-4-6. Delivery of child for adoption; filing of petition.**

1 (a) Whenever a person delivers a child for adoption the  
2 person first receiving such child and the prospective adopt-  
3 ing parent or parents shall be entitled to receive from such  
4 person a written recital of all known circumstances surround-  
5 ing the birth, medical and family medical history of the  
6 child, and an itemization of any facts or circumstances un-  
7 known or requiring further development.

8 (b) The person or persons receiving a child for adoption  
9 shall, unless good cause is shown, immediately file a petition

10 for adoption, with or without all requisite consents, and  
11 the court may, in its discretion, enter an order authorizing  
12 such petitioner or petitioners to assume all responsibility for  
13 the care, custody and control of such child, pendente lite, in-  
14 cluding the right to consent to medical treatment, which decree  
15 shall not be denied except for good cause set forth in the  
16 order.

**§48-4-7. Petition and appendix.**

1. (a) The petition shall set forth the name, age and place  
2 of residence of the petitioner or petitioners, and of the  
3 child, and the name by which the child shall be known;  
4 whether such child be possessed of any property and a full  
5 description of the same, if any; and whether the petitioner  
6 or petitioners know the identity of the persons entitled to  
7 parental rights or, that the same are unknown to the petitioner  
8 or petitioners. An effort shall be made to obtain medical and  
9 social information, and that information, along with all non-  
10 identifying information about the birth, shall accompany the  
11 petition and be made a part of the nonidentifying information  
12 to be sealed in the court file. The petition shall be duly  
13 verified according to law.

14 (b) If the person petitioning for adoption is less than  
15 fifteen years older than the child sought to be adopted, such  
16 fact shall be set forth specifically in the petition. In such  
17 case, the court shall grant the adoption only upon a specific  
18 finding that notwithstanding the differences in age of the  
19 petitioner and child, such adoption is in the best interests of  
20 the child: *Provided*, That when the petitioner seeks to adopt  
21 a child of his or her spouse, such specific finding shall not be  
22 required and an adoption shall not be denied on the sole  
23 basis of proximity in age. In addition, the petition shall set  
24 forth such of the facts concerning the circumstances of the  
25 birth of the child as the petitioner or petitioners are in-  
26 formed. Either the petition, the various consents attached  
27 thereto or filed in the cause, or an appendix signed by counsel  
28 or other credible persons shall fully disclose all that is known  
29 about the parentage of the child.

**§48-4-8. Notice.**

1 (a) Unless waived by a writing acknowledged as in the

2 case of deeds or by other proper means, notice of the adoption  
3 proceeding shall be served on any person entitled to parental  
4 rights of a child prior to its adoption who has not signed either  
5 a consent for the adoption of the child or a relinquishment of  
6 custody of such child, or whose parental rights have not  
7 otherwise been terminated.

8 In addition, notice shall be given to any putative or un-  
9 known father who has asserted or exercised parental rights  
10 and duties to and with such child and who has not consented  
11 or relinquished any parental rights and such rights have not  
12 otherwise been terminated, or who has not had reasonable  
13 opportunity before or after the birth of the child to assert or  
14 exercise such rights: *Provided*, That if such child is more  
15 than six months old at the time such notice would be re-  
16 quired and such father has not asserted or exercised his  
17 parental rights and he knew the whereabouts of the child,  
18 then such father shall be presumed to have had reasonable op-  
19 portunity to assert or exercise such rights.

20 (b) Such notice shall be served on each such person  
21 at least twenty days before the date of the final hearing  
22 in the adoption proceeding and shall inform the person that  
23 his or her parental rights, if any, may be terminated in the  
24 proceeding and that such person may appear and defend any  
25 such rights within twenty days of such service. In the case of  
26 any such person who is a nonresident or whose whereabouts  
27 are unknown, service shall be achieved (1) by personal service,  
28 (2) by registered or certified mail, return receipt requested,  
29 postage prepaid, to the person's last-known address, with in-  
30 structions to forward, or (3) by publication. If personal service  
31 is not acquired, then if the person giving notice shall have any  
32 knowledge of the whereabouts of the person to be served, in-  
33 cluding a last-known address, service by mail shall be first  
34 attempted as herein provided. Any such service achieved by  
35 mail shall be complete upon mailing and shall be sufficient  
36 service without the need for notice by publication. In the  
37 event that no return receipt is received giving adequate evi-  
38 dence of receipt of the notice by the addressee or of receipt of  
39 the notice at the address to which the notice was mailed or  
40 forwarded, or if the whereabouts of the person are unknown,



41 then the person required to give notice shall file with the court  
42 an affidavit setting forth the circumstances of any attempt to  
43 serve the notice by mail, and the diligent efforts to ascertain  
44 the whereabouts of the person to be served. If the court deter-  
45 mines that the whereabouts of the person to be served cannot  
46 be ascertained and that due diligence has been exercised to  
47 ascertain such person's whereabouts, then the court shall  
48 order service of such notice by publication as a Class II publi-  
49 cation in compliance with the provisions of article three, chap-  
50 ter fifty-nine of the code, and the publication area shall be  
51 the county where such proceedings are had, and in the county  
52 where the person to be served was last known to reside. The  
53 notice shall state the court and its address but not the names of  
54 the adopting parents. In the case of a person under disability,  
55 service shall be made on the person and his personal repre-  
56 sentative, or if there be none, on a guardian ad litem.

57 In the case of service by publication or mail or service on  
58 a personal representative or a guardian ad litem, the person  
59 shall be allowed thirty days from the date of the first publi-  
60 cation or mailing or such service on a personal representative  
61 or guardian ad litem in which to appear and defend such  
62 parental rights.

**§48-4-9. Proceedings.**

1 (a) When the cause has matured for hearing but not sooner  
2 than six months after the child has resided continuously in  
3 the home of the petitioner or petitioners, the court shall decree  
4 the adoption if:

5 (1) It determines that no person retains parental rights  
6 in such child except the petitioner and the petitioner's spouse,  
7 or the joint petitioners;

8 (2) That all applicable provisions of this article have been  
9 complied with;

10 (3) That the petitioner is or the petitioners are fit persons  
11 to adopt the child; and

12 (4) That it is in the best interests of the child to order  
13 such adoption.

14 (b) The court or judge thereof may adjourn the hearing  
15 of such petition or the examination of the parties in interest  
16 from time to time, as the nature of the case may require.  
17 Between the time of the filing of the petition for adoption  
18 and the hearing thereon, the court or judge thereof shall,  
19 unless the court or judge otherwise finds that one or more  
20 of the petitioners is related by blood or marriage to the  
21 child or to persons previously entitled to parental rights, and  
22 the court otherwise directs, cause a discreet inquiry to be  
23 made to determine whether such child is a proper subject  
24 for adoption and whether the home of the petitioner or  
25 petitioners is a suitable home for such child. Any such in-  
26 quiry, if directed, shall be made by any suitable and discreet  
27 person not related to either the persons previously entitled  
28 to parental rights or the adoptive parents, or by an agency  
29 designated by the court, or judge thereof, and the results  
30 thereof shall be submitted to the court or judge thereof  
31 prior to or upon the hearing on the petition and shall be filed  
32 with the records of the proceeding and become a part thereof.  
33 The report shall include, but not be limited to, the follow-  
34 ing:

35 (1) A description of the family members, including medical  
36 and employment histories;

37 (2) A physical description of the home and surroundings;  
38 and

39 (3) A description of the adjustment of the child and family.

40 (c) If it shall be necessary, under the provisions of this  
41 article, that a discreet and suitable person shall be ap-  
42 pointed to act as the next friend of the child sought to  
43 be adopted, then and in that case the court or judge thereof  
44 shall order a notice of the petition and of the time and  
45 place when and where the appointment of next friend will be  
46 made, to be published as a Class II legal advertisement in  
47 compliance with the provisions of article three, chapter  
48 fifty-nine of this code, and the publication area for such  
49 publication shall be the county where such court is located.  
50 At the time and place so named and upon due proof of the  
51 publication of such notice, the court or judge thereof shall

52 make such appointment, and shall thereupon assign a day for  
53 the hearing of such petition and the examination of the  
54 parties interested.

55 (d) Upon the day so assigned the court or judge thereof  
56 shall proceed to a final hearing of the petition and examina-  
57 tion of the parties in interest, under oath, and of such other  
58 witnesses as the court or judge thereof may deem necessary  
59 to develop fully the standing of the petitioners and their  
60 responsibility, and the status of the child sought to be adopted;  
61 and if the court or judge thereof shall be of the opinion from  
62 the testimony that the facts stated in the petition are true, and  
63 if upon examination the court or judge thereof is satisfied  
64 that the petitioner is, or the petitioners are, of good moral  
65 character, and of respectable standing in the community, and  
66 are able properly to maintain and educate the child sought  
67 to be adopted, and that the best interests of the child would  
68 be promoted by such adoption, then and in such case the  
69 court or judge thereof shall make an order reciting the  
70 facts proved and the name by which the child shall thereafter  
71 be known, and declaring and adjudging that from the date of  
72 such order, the rights, duties, privileges and relations, there-  
73 tofore existing between the child and those persons previously  
74 entitled to parental rights, shall be in all respects at an  
75 end, and that the rights, duties, privileges and relations be-  
76 tween the child and his or her parent or parents by adoption  
77 shall thenceforth in all respects be the same, including the  
78 rights of inheritance, as if the child had been born to such  
79 adopting parent or parents in lawful wedlock, except only as  
80 otherwise provided in this article: *Provided*, That no such  
81 order shall disclose the names or addresses of those persons  
82 previously entitled to parental rights.

**§48-4-10. Recordation of order; fees; disposition of records; names  
of adopting parents and persons previously entitled  
to parental rights not to be disclosed; disclosure of  
identifying and nonidentifying information; certificate  
for state registrar of vital statistics; birth certificate.**

1 (a) The order of adoption shall be recorded in a book  
2 kept for that purpose, and the clerk shall receive the same fees  
3 as in other cases. All records of proceedings in adoption

4 cases and all papers and records relating to such proceedings  
5 shall be kept in the office of the clerk of the circuit court  
6 in a sealed file, which file shall be kept in a locked or sealed  
7 cabinet, vault or other container and shall not be open to  
8 inspection or copy by anyone, except as otherwise provided in  
9 this article, or upon court order for good cause shown. No  
10 person in charge of adoption records shall disclose the names  
11 of the adopting parent or parents, the names of persons pre-  
12 viously entitled to parental rights, or the name of the adopted  
13 child, except as otherwise provided in this article, or upon  
14 court order for good cause shown. The clerk of the court  
15 keeping and maintaining the records in adoption cases shall  
16 keep and maintain an index of such cases separate and  
17 distinct from all other indices kept or maintained by him,  
18 and the index of adoption cases shall be kept in a locked  
19 or sealed cabinet, vault or other container and shall not be  
20 open to inspection or copy by anyone, except as otherwise  
21 provided in this article, or upon court order for good cause  
22 shown. Nonidentifying information, such as a description of  
23 family members and medical histories, may be provided to the  
24 adoptive parents and the adopted child by submitting a duly  
25 acknowledged request to the clerk of the court. The clerk  
26 may charge the requesting party for copies of any documents,  
27 as provided in section eleven, article one, chapter fifty-nine of  
28 this code.

29 (b) Identifying information may only be obtained with  
30 the duly acknowledged consent of the mother or the legal or  
31 determined father who consented to the adoption or whose  
32 rights were otherwise relinquished or terminated, together  
33 with the duly acknowledged consent of the adopted child upon  
34 reaching majority, or upon court order for good cause shown.  
35 Such duly acknowledged consents may be filed with the  
36 clerk of the court, at any time after the adoption, authorizing  
37 release of identifying information. Any person previously  
38 entitled to parental rights may from time to time submit addi-  
39 tional social or medical information which, notwithstanding  
40 other provisions of this article, shall be inserted into the  
41 record by the clerk of the court.

42 (c) Immediately upon the entry of such order of adoption,

43 the court shall direct the clerk thereof forthwith to make  
44 and deliver to the state registrar of vital statistics a certificate  
45 under the seal of said court, showing:

46 (1) The date and place of birth of the child, if known;

47 (2) The name of the mother of the child, if known, and  
48 the name of the legal or determined father of the child, if  
49 known;

50 (3) The name by which said child has previously been  
51 known;

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

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

55 (6) Such other information from the record of the adoption  
56 proceedings as may be required by the law governing vital  
57 statistics and as may enable the state registrar of vital statistics  
58 to carry out the duties imposed upon him by this section.

59 (d) Upon receipt of the certificate, the registrar of vital  
60 statistics shall forthwith issue and deliver by mail to the  
61 adopting parents at their last-known address and to the clerk  
62 of the county commission of the county wherein such order of  
63 adoption was entered, a birth certificate in the form prescribed  
64 by law, except that the name of the child shown in said certifi-  
65 cate shall be the name given him by the order of adoption.  
66 The clerk shall record such birth certificate in the manner set  
67 forth in section nineteen, article five, chapter sixteen of this  
68 code.

**§48-4-11. Effect of order as to relations of parents and child and  
as to rights of inheritance; intestacy of adopted child.**

1 (a) Upon the entry of such order of adoption, any person  
2 previously entitled to parental rights, any parent or parents  
3 by any previous legal adoption, and the lineal or collateral  
4 kindred of any such person, parent or parents, except any  
5 such person or parent who is the husband or wife of the  
6 petitioner for adoption, shall be divested of all legal rights,  
7 including the right of inheritance from or through the adopted  
8 child under the statutes of descent and distribution of this

9 state, and shall be divested of all obligations in respect to the  
10 said adopted child, and the said adopted child shall be free  
11 from all legal obligations, including obedience and mainten-  
12 ance, in respect to any such person, parent or parents. From  
13 and after the entry of such order of adoption, the adopted  
14 child shall be, to all intents and for all purposes, the legitimate  
15 issue of the person or persons so adopting him or her and  
16 shall be entitled to all the rights and privileges and subject  
17 to all the obligations of a natural child of such adopting par-  
18 ent or parents.

19 (b) For the purpose of descent and distribution, from and  
20 after the entry of such order of adoption, a legally adopted  
21 child shall inherit from and through the parent or parents  
22 of such child by adoption and from or through the lineal or  
23 collateral kindred of such adopting parent or parents in the  
24 same manner and to the same extent as though said adopted  
25 child were a natural child of such adopting parent or parents,  
26 but such child shall not inherit from any person entitled to  
27 parental rights prior to the adoption nor their lineal or col-  
28 lateral kindred, except that a child legally adopted by a  
29 husband or wife of a person entitled to parental rights prior  
30 to the adoption shall inherit from such person as well as from  
31 the adopting parent. If a legally adopted child shall die  
32 intestate, all property, including real and personal, of such  
33 adopted child shall pass, according to the statutes of descent  
34 and distribution of this state, to those persons who would  
35 have taken had the decedent been the natural child of the  
36 adopting parent or parents.

**§48-4-12. Revocation of adoption.**

1 (a) A mother, a legal or determined birth father, or a  
2 guardian of a child, who did not consent to the adoption of  
3 such child, or any person entitled to notice as provided in  
4 section eight of this article, or subsections (b) and (c),  
5 section one, article three, chapter forty-nine of this code,  
6 who was not served with notice as provided in said provisions,  
7 may, at any time within one year after learning of or having  
8 reasonable opportunity to learn of the adoption, apply by  
9 petition to the court in which the adoption was granted,  
10 praying that the adoption be vacated. The court to which

11 such application is made shall fix a date and time for a hearing,  
12 shall cause notice thereof to be given to the person or per-  
13 sons or agency who were permitted to adopt such minor,  
14 and, at the time so fixed, shall hear the petitioner and all  
15 parties interested, and may vacate or affirm the adoption in  
16 its discretion. Any party interested may appeal to the supreme  
17 court of appeals from the decision of the court in the matter,  
18 as in other civil cases.

19 (b) When any minor has been adopted, he may, within  
20 one year after becoming of age, sign, seal and acknowledge  
21 before proper authority, in the county in which the order of  
22 adoption was made, a dissent from such adoption, and file  
23 such instrument of dissent in the office of the clerk of the  
24 court which granted said adoption and the clerk of the  
25 county commission of such county, and such clerks shall  
26 record and index the same. Upon the filing of such instru-  
27 ment of dissent the adoption shall be vacated.

**§48-4-13. Adoption of adults.**

1 Any adult person who is a resident of West Virginia may  
2 petition the circuit court or any other court of record having  
3 jurisdiction of adoption proceedings for permission to adopt  
4 one who has reached the age of eighteen years or over,  
5 and, if desired, to change the name of such person. The  
6 consent of the person to be adopted shall be the only con-  
7 sent necessary. The order of adoption shall create the same  
8 relationship between the adopting parent or parents and the  
9 person adopted and the same rights of inheritance as in the  
10 case of an adopted minor child. If a change in name is de-  
11 sired, the adoption order shall so state.

**§48-4-14. Jurisdiction of courts.**

1 In counties where the circuit court does not sit as a juvenile  
2 court, concurrent jurisdiction in adoption proceedings is here-  
3 by extended to such juvenile courts.

**§48-4-15. Contracts limiting or restraining adoptions.**

1 Any contract, agreement or stipulation which endeavors  
2 to deny to any person or persons the right to petition for  
3 adoption of any person, or which endeavors to alter the time

4 or manner of adoption as provided in this article, is con-  
5 trary to the public policy of the state and such portion of  
6 any contract, agreement or stipulation is null and void and  
7 of no effect.

**ARTICLE 3. CHILD WELFARE AGENCIES.**

**§49-3-1. Consent by agency or department to adoption of child;  
statement of relinquishment by parent; petition to ter-  
minate parental rights.**

1 (a) Whenever a child welfare agency licensed to place  
2 children for adoption or the state department of human  
3 services shall have been given the permanent care, custody  
4 and guardianship of any child and the rights of the mother  
5 and the rights of the legal, determined, putative or unknown  
6 father of such child shall have been terminated by order of a  
7 court of competent jurisdiction or by a legally executed relin-  
8 quishment of parental rights, the child welfare agency or de-  
9 partment of human services may consent to the adoption of  
10 such child pursuant to the provisions of article four, chapter  
11 forty-eight of this code, regulating adoption proceedings. The  
12 mother and the legal or determined father of a child, or the  
13 mother if the father is putative or unknown, may relinquish the  
14 child to a child welfare agency licensed to place children for  
15 adoption, or to the department of human services, by a written  
16 statement acknowledged as deeds are required to be acknow-  
17 ledged by law: *Provided*, That if either of the parents of such  
18 child is under eighteen years of age, such relinquishment shall  
19 not be valid unless and until the same shall have been approved  
20 in writing by a judge of a court having jurisdiction of adop-  
21 tion proceedings in the county in which such parent may  
22 reside or in which such relinquishment is made.

23 (b) (1) Whenever the mother has executed a relinquish-  
24 ment pursuant to this section, and the legal, determined,  
25 putative or unknown father, as those terms are defined pur-  
26 suant to the provisions of section one, article four, chapter  
27 forty-eight of this code, has not executed a relinquishment,  
28 the child welfare agency or state department of human services  
29 may, by verified petition, seek to have said father's rights  
30 terminated based upon the grounds of abandonment or neglect  
31 of said child.



32 (2) Unless waived by a writing acknowledged as in the  
33 case of deeds or by other proper means, notice of the petition  
34 shall be served on any person entitled to parental rights  
35 of a child prior to its adoption who has not signed a relinquish-  
36 ment of custody of such child.

37 (3) In addition, notice shall be given to any putative or un-  
38 known father who has asserted or exercised parental rights and  
39 duties to and with such child and who has not consented or  
40 relinquished any parental rights and such rights have not  
41 otherwise been terminated, or who has not had reasonable  
42 opportunity before or after the birth of the child to assert  
43 or exercise such rights: *Provided*, That if such child is more  
44 than six months old at the time such notice would be re-  
45 quired and such father has not asserted or exercised his parental  
46 rights and he knew the whereabouts of the child, then such  
47 father shall be presumed to have had reasonable opportunity  
48 to assert or exercise such rights.

49 (c) Upon the filing of the verified petition seeking to  
50 have the father's rights terminated, the court shall set a  
51 hearing on said petition. A copy of the petition and notice  
52 of the date, time and place of the hearing on said petition  
53 shall be personally served on him at least twenty days prior  
54 to the date set for the hearing.

55 Such notice shall inform the person that his parental rights,  
56 if any, may be terminated in the proceeding and that such  
57 person may appear and defend any such rights within twenty  
58 days of such service. In the case of any such person who is a  
59 nonresident or whose whereabouts are unknown, service shall  
60 be achieved (1) by personal service, (2) by registered or certi-  
61 fied mail, return receipt requested, postage prepaid, to the  
62 person's last-known address, with instructions to forward, or  
63 (3) by publication. If personal service is not acquired, then if  
64 the person giving notice shall have any knowledge of the  
65 whereabouts of the person to be served, including a last-known  
66 address, service by mail shall be first attempted as herein  
67 provided. Any such service achieved by mail shall be com-  
68 plete upon mailing and shall be sufficient service without the  
69 need for notice by publication. In the event that no return

70 receipt is received giving adequate evidence of receipt of the  
71 notice by the addressee or of receipt of the notice at the address  
72 to which the notice was mailed or forwarded, or if the where-  
73 abouts of the person are unknown, then the person required to  
74 give notice shall file with the court an affidavit setting forth  
75 the circumstances of any attempt to serve the notice by mail,  
76 and the diligent efforts to ascertain the whereabouts of the  
77 person to be served. If the court determines that the where-  
78 abouts of the person to be served cannot be ascertained and  
79 that due diligence has been exercised to ascertain such person's  
80 whereabouts, then the court shall order service of such notice  
81 by publication as a Class II publication in compliance with  
82 the provisions of article three, chapter fifty-nine of the code,  
83 and the publication area shall be the county where such pro-  
84 ceedings are had, and in the county where the person to be  
85 served was last known to reside. In the case of a person under  
86 disability, service shall be made on the person and his per-  
87 sonal representative, or if there be none, on a guardian ad  
88 litem.

89 In the case of service by publication or mail or service  
90 on a personal representative or a guardian ad litem, the person  
91 shall be allowed thirty days from the date of the first publi-  
92 cation or mailing of such service on a personal representative  
93 or guardian ad litem in which to appear and defend such  
94 parental rights.

95 (d) A petition under this section may be instituted in the  
96 county where the child resides or where the child is living.

97 (e) If the court finds that the person certified to parental  
98 rights is guilty of the allegations set forth in the petition,  
99 the court shall enter an order terminating his parental rights  
100 and shall award the full care, custody and control of said child  
101 to the petitioner.


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

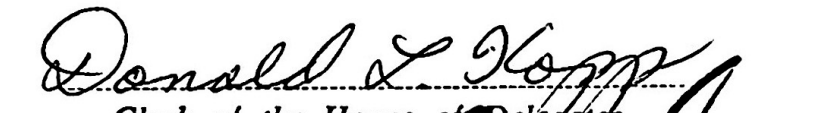

  
Chairman Senate Committee

  
Chairman House Committee

Originating 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 30  
day of March, 1984.

  
Governor

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84 APR 4 P 3: 51

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