

No. 1703

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



ENROLLED

Com. Sub. for
HOUSE BILL No. 1703

(By ~~Mr.~~ Del Hutchinson + Del Roop)



Passed April 13, 1985

In Effect 90 Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1703

(By DELEGATE HUTCHINSON and DELEGATE ROOP)

[Passed April 13, 1985; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, three, four, five, six, eight and nine, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions; consent; consent by infants; revocation of consent or relinquishment for adoption; when given; requirements; filing of petition; notice; and proceedings.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five, six, eight and nine, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 requires:
- 2 (a) A "legal father" is, before adoption, the male person
- 3 having the legal relationship of parent to a child, (1) who is
- 4 married to its mother at the time of conception; or (2) who
- 5 is married to its mother at the time of birth of the child; or
- 6 (3) who is the biological father of the child and who marries
- 7 the mother before an adoption of the child.

8 (b) A “determined father” is, before adoption, a person (1)
9 adjudicated to be the father of a child under the provisions
10 of article seven of this chapter; or (2) who makes an affidavit
11 stating that he is the father of a child and who is identified
12 as the father by the mother in a like affidavit; or (3) who has,
13 at his instance, been otherwise judicially determined to be the
14 biological father of the child entitled to parental rights with
15 respect to the child; or (4) who claims to be the father of the
16 child.

17 (c) An “unknown father” is the biological father who, before
18 adoption, is neither the legal father nor determined father of
19 the child.

20 (d) A “birth mother” is the biological mother of the child;

21 (e) A “birth father” is the biological father of the child; and

22 (f) The “adoptive parents” or “adoptive mother” or
23 “adoptive father” shall mean those persons who, after
24 adoption, are the mother and father of the child.

§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 court orders, after hearing, that the
4 parental rights of such person are terminated, abandoned or
5 permanently relinquished, or that the person is under disability
6 solely because of age. If the person is under disability, the
7 court may decree the adoption if it orders (1) that the parental
8 rights of the persons are terminated, abandoned or perman-
9 ently relinquished, (2) that the person is incurably insane, or
10 (3) the disability arises solely because of age and an otherwise
11 valid consent has been given.

12 (b) Any consent to adoption or relinquishment of parental
13 rights shall have the effect of authorizing the prospective
14 adoptive parents to consent to medical treatment for the child,
15 whether or not such authorization is expressly stated in the
16 consent or relinquishment.

17 (c) If all persons entitled to parental rights of the child
18 sought to be adopted are deceased or have been deprived of
19 the custody of the person of such child by law, then and in
20 such case, the written consent, acknowledged as aforesaid, of

21 the legal guardian of such child or those having at the time
22 the legal custody of the child shall be obtained and so
23 presented, and if there be no legal guardian nor any person
24 having the legal custody of the child, then such consent must
25 be obtained from some discreet and suitable person appointed
26 by the court or judge thereof to act as the next friend of such
27 child in the adoption proceedings.

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

32 (e) In addition to the consent required in subsections (a)
33 through (d) of this section, in any case where the child sought
34 to be adopted is twelve years of age or over, the written
35 consent of such child to such adoption, given in the presence
36 of the judge having jurisdiction thereof, must also be obtained
37 and presented before the entry of any order of adoption, unless
38 for extraordinary cause such is waived by court order.

§48-4-4. Consent by infants.

1 If it appears that a person giving consent to adoption is
2 under eighteen years of age at the time of the filing of the
3 petition, and that such infant parent is a resident of the state,
4 the consent shall be specifically reviewed and approved by the
5 court and a guardian ad litem may be appointed to represent
6 the interests of the consenting infant parent. The guardian ad
7 litem shall conduct a discreet inquiry regarding the consent
8 given, and may inquire of any attorney, social worker, notary
9 public or other person having knowledge of the consent. If the
10 guardian ad litem finds reasonable cause to believe that the
11 consent given was obtained by fraud or duress, the court may
12 request the consenting infant parent to appear before the court
13 or at a deposition, so that inquiry may be made regarding the
14 consent given. Failure to appoint a guardian ad litem is not
15 grounds for setting aside a decree of adoption.

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

1 (a) Parental consent or relinquishment of legal custody for
2 adoption purposes, whether given by an adult or minor, is
3 irrevocable from the time of execution, except where a court

4 of competent jurisdiction finds that, notwithstanding the terms
5 of the consent or relinquishment, such consent or relinquish-
6 ment was obtained by fraud or duress, if

7 (1) The consent or relinquishment is executed after the
8 expiration of seventy-two hours after the birth of the child,
9 and the consent so states;

10 (2) The parent executing the consent or relinquishment is
11 informed that the consent is irrevocable from the time
12 executed, and the consent so states;

13 (3) The consent or relinquishment includes a statement that
14 the parent executing the consent does so of his own free will,
15 that the consent was not obtained through fraud or duress,
16 that the parent executing the consent believes the adoption of
17 the child to be in the best interests of the child, expressly
18 waives notice of any adoption proceeding to be filed, and joins
19 in the petition to be filed and the prayer that the child be
20 adopted; and

21 (4) In the case of a consenting parent under the age of
22 eighteen, either a guardian ad litem is appointed pursuant to
23 the provisions of section four of this article and the consent
24 reviewed and approved by the court, or the consent or
25 relinquishment is executed in the presence of and approved by
26 a judge of a court of record in the county in which such
27 relinquishment is made.

28 (b) Any parental consent or relinquishment of legal custody
29 for adoption purposes which does not conform to the
30 requirements of subsection (a) of this section may be revoked
31 by such parent within ten days after the consent is executed
32 and, whether given by an adult or a minor, is irrevocable
33 thereafter except where a court of competent jurisdiction finds
34 that such consent or relinquishment for adoption was obtained
35 by fraud or duress.

36 (c) A consent or relinquishment of legal custody which is
37 revocable pursuant to the provisions of subdivision (b)
38 hereunder, if executed in this state, shall set forth the method
39 by which the same may be revoked, including the name and
40 location of the person to contact in the event the person desires
41 to exercise his or her right of revocation. Notwithstanding any
42 provision of this section to the contrary, any revocable consent

43 which does not so state the method of revocation may be
44 revoked within twenty days of the time of execution and,
45 whether given by an adult or a minor, is irrevocable thereafter
46 except where a court of competent jurisdiction finds that such
47 consent or relinquishment for adoption was obtained by fraud
48 or duress.

49 (d) Notwithstanding any other provision of this section to
50 the contrary, a relinquishment of legal custody for adoption
51 of a child given by a minor to a licensed private child welfare
52 agency or to the state department of human services shall be
53 with section one, article three, chapter forty-nine of this code.

54 (e) Any payment to physicians, attorneys, adoption agencies
55 or to any other person involved in the adoption process shall
56 be limited to cover fees from services rendered.

§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 adopting
3 parent or parents shall be entitled to receive from such person
4 a written recital of all known circumstances surrounding the
5 birth, medical and family medical history of the child, and an
6 itemization of any facts or circumstances unknown or
7 requiring further development.

8 (b) The petition for adoption may be filed at any time after
9 the child who is the subject of the adoption is born and the
10 adoptive placement determined, with or without all requisite
11 consents, but the hearing on said petition shall not be held
12 until after the child shall have lived in the house of the
13 adopting parent or parents for a period of six months.

§48-4-8. Notice.

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

8 (b) Such notice shall be served on each such person at least
9 twenty days before the date of the final hearing in adoption

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10 proceeding and shall inform the person that his or her parental
11 rights, if any, may be terminated in the proceeding and that
12 such person may appear and defend any such rights within
13 twenty days of such service. In the case of any such person
14 who is a nonresident or whose whereabouts are unknown,
15 service shall be achieved (1) by personal service, (2) by
16 registered or certified mail, return receipt requested, postage
17 prepaid, to the person's last-known address, with instructions
18 to forward, or (3) by publication. If personal service is not
19 acquired, then if the person giving notice shall have any
20 knowledge of the whereabouts of the person to be served,
21 including a last-known address, service by mail shall be first
22 attempted as herein provided. Any such service achieved by
23 mail shall be complete upon mailing and shall be sufficient
24 service without the need for notice by publication. In the event
25 that no return receipt is received giving adequate evidence of
26 receipt of the notice by the addressee or of receipt of the notice
27 at the address to which the notice was mailed or forwarded,
28 or if the whereabouts of the person are unknown, then the
29 person required to give notice shall cause service of such notice
30 by publication as a Class II publication in compliance with
31 the provisions of article three, chapter fifty-nine of the code,
32 and the publication area shall be the county where such
33 proceedings are had, and in the county where the person to
34 be served was last known to reside except in cases of foreign
35 adoptions where the child is admitted to this country for
36 purposes of adoptive placement and the United States
37 Immigration and Naturalization Service has issued the foreign
38 born child a visa or unless good cause is shown for not
39 publishing in the county where the person was last known to
40 reside. The notice shall state the court and its address but not
41 the names of the adopting parents. In the case of a person
42 under disability, service shall be made on the person and his
43 personal representative, ^{or} if there be none, on a guardian ad
44 litem.

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45 In the case of service by publication or mail or service on
46 a personal representative or a guardian ad litem, the person
47 shall be allowed thirty days from the date of the first
48 publication or mailing or such service on a personal
49 representative or guardian ad litem in which to appear and
50 defend such 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 the
3 home of the petitioner or petitioners, the court shall decree
4 the adoption if:

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

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

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

33 (2) A physical description of the home and surroundings;
34 and

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

36 (c) If it shall be necessary, under the provisions of this

37 article, that a discreet and suitable person shall be appointed
38 to act as the next friend of the child sought to be adopted,
39 then and in that case the court or judge thereof shall order
40 a notice of the petition and of the time and place when and
41 where the appointment of next friend will be made, to be
42 published as a Class II legal advertisement in compliance with
43 the provisions of article three, chapter fifty-nine of this code,
44 and the publication area for such publication shall be the
45 county where such court is located. At the time and place so
46 named and upon due proof of the publication of such notice,
47 the court or judge thereof shall make such appointment, and
48 shall thereupon assign a day for the hearing of such petition
49 and the examination of the parties interested.

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

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

Harrell E. Holms
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Wuck
Clerk of the Senate

Donald S. Hoopp
Clerk of the House of Delegates

Don Tombril
President of the Senate

Joseph F. Albright
Speaker of the House of Delegates

The within *approved* this the *2nd*
day of *May*, 1985.
Anna. Shays
Governor

PRESENTED TO THE
GOVERNOR

Date 4/25/85
Time 2:44 p.m.