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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

ENROLLED

SENATE BILL NO. 522

(By Senator Chernenko, et al)

PASSED March 9, 1991

In Effect 90 days from Passage

ENROLLED

Senate Bill No. 522

(BY SENATORS CHERNENKO, HUMPHREYS, BURDETTE, MR. PRESIDENT, WIEDEBUSCH, HECK, CHAFIN, BAILEY, HOLLIDAY, WEHRLE, PRITT, TOMBLIN, M. MANCHIN, CRAIGO, CLAYPOLE, ANDERSON, FELTON, BRACKENRICH, WHITLOW, HELMICK, WITHERS, DITTMAR, WAGNER, BLATNIK, BOLEY AND MINARD)

[Passed March 9, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four-a, all relating to providing for the transmission of nonidentifying information on the health and history and the genetic and social history of adoptees; and establishing a mutual consent voluntary adoption registry.

Be it enacted by the Legislature of West Virginia:

That section ten, 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 said chapter be further amended by adding thereto a new article, designated article four-a, all to read as follows:

ARTICLE 4. ADOPTION.

§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 non-identifying 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
3 same fees as in other cases. All records of proceedings
4 in adoption cases and all papers and records relating to
5 such proceedings shall be kept in the office of the clerk
6 of the circuit court in a sealed file, which file shall be
7 kept in a locked or sealed cabinet, vault or other
8 container and shall not be open to inspection or copy
9 by anyone, except as otherwise provided in this article,
10 or upon court order for good cause shown. No person
11 in charge of adoption records shall disclose the names
12 of the adopting parent or parents, the names of
13 persons previously entitled to parental rights, or the
14 name of the adopted child, except as otherwise pro-
15 vided in this article, or upon court order for good
16 cause shown. The clerk of the court keeping and
17 maintaining the records in adoption cases shall keep
18 and maintain an index of such cases separate and
19 distinct from all other indices kept or maintained by
20 him, and the index of adoption cases shall be kept in
21 a locked or sealed cabinet, vault or other container and
22 shall not be open to inspection or copy by anyone,
23 except as otherwise provided in this article, or upon
24 court order for good cause shown. Nonidentifying
25 information, the collection of which is provided for in
26 article four-a of this chapter, shall be provided to the
27 adoptive parents as guardians of the adopted child, or
28 to the adult adoptee, by their submitting a duly
29 acknowledged request to the clerk of the court. The
30 clerk may charge the requesting party for copies of
31 any documents, as provided in section eleven, article
32 one, chapter fifty-nine of this code. Either birth parent
33 may from time to time submit additional social,
34 medical or genetic history for the adoptee, which
35 information shall be placed in the court file by the
36 clerk, who shall bring the existence of this medical
37 information to the attention of the court. The court
38 shall immediately transmit all such nonidentifying
39 medical, social or genetic information to the adoptive

40 parents or the adult adoptee.

41 (b) If an adoptee, or parent of a minor adoptee, is
42 unsuccessful in obtaining identifying information by
43 use of the mutual consent voluntary adoption registry
44 provided for in article four-a of this chapter, identify-
45 ing information may be sought through the following
46 process:

47 (1) Upon verified petition of an adoptee at least
48 eighteen years of age, or, if less than eighteen, his
49 adoptive parent or legal guardian, the court may also
50 attempt, either itself, or through its designated agent,
51 to contact the birth parents, if known, to obtain their
52 consent to release identifying information to the
53 adoptee. The petition shall state the reasons why the
54 adoptee desires to contact his birth parents, which
55 reasons shall be disclosed to the birth parents if
56 contacted. The court and its agent shall take any and
57 all care possible to assure that none but the birth
58 parents themselves are informed of the adoptee's
59 existence in relationship to them. The court may
60 appoint the department of human services, or a
61 private agency which provides adoption services in
62 accordance with standards established by law, to
63 contact birth parents as its designated agent, the said
64 agent shall report to the court the results of said
65 contact.

66 (2) Upon the filing of a verified petition as provided
67 in subdivision (1) of this section, should the court be ^{pen} _{sub}
68 unable to obtain consent from either of the birth
69 parents to release identifying information, the court
70 may release such identifying information to the
71 adoptee, or if a minor, the adoptee's parents or
72 guardian, after notice to the birth parents and a
73 hearing thereon, at which hearing the court must
74 specifically find that there exists evidence of compel-
75 ling medical or other good cause for release of such
76 identifying information.

77 (c) Identifying information may only be obtained
78 with the duly acknowledged consent of the mother or
79 the legal or determined father who consented to the

80 adoption or whose rights were otherwise, relinquished
81 or terminated, together with the duly acknowledged
82 consent of the adopted child upon reaching majority,
83 or upon court order for good cause shown. Any person
84 previously entitled to parental rights may from time to
85 time submit additional social or medical information
86 which, notwithstanding other provisions of this article,
87 shall be inserted into the record by the clerk of the
88 court.

89 (d) Immediately upon the entry of such order of
90 adoption, the court shall direct the clerk thereof
91 forthwith to make and deliver to the state registrar of
92 vital statistics a certificate under the seal of said court,
93 showing:

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

95 (2) The names of the mother of the child, if known,
96 and the name of the legal or determined father of the
97 child, if known;

98 (3) The name by which said child has previously
99 been known;

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

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

103 (6) Such other information from the record of the
104 adoption proceedings as may be required by the law
105 governing vital statistics and as may enable the state
106 registrar of vital statistics to carry out the duties
107 imposed upon him by this section.

108 (e) Upon receipt of the certificate, the registrar of
109 vital statistics shall forthwith issue and deliver by mail
110 to the adopting parents at their last-known address
111 and to the clerk of the county commission of the
112 county wherein such order of adoption was entered, a
113 birth certificate in the form prescribed by law, except
114 that the name of the child shown in said certificate
115 shall be the name given him by the order of adoption.
116 The clerk shall record such birth certificate in the
117 manner set forth in section twelve, article five,

118 chapter sixteen of this code.

ARTICLE 4A. VOLUNTARY ADOPTION REGISTRY.

§48-4A-1. Policy and purposes.

1 Adoption is based upon the legal termination of
2 parental rights and responsibilities of birth parents
3 and the creation of the legal relationship of parent and
4 child between an adoptee and his adoptive parents.
5 These legal and social premises underlying adoption
6 must be maintained. The Legislature recognizes that
7 some adults who were adopted as children have a
8 strong desire to obtain identifying information about
9 their birth parents while other such adult adoptees
10 have no such desire. The Legislature further recog-
11 nizes that some birth parents have a strong desire to
12 obtain identifying information about their biological
13 children who were surrendered for adoption, while
14 other birth parents have no such desire. The Legisla-
15 ture fully recognizes the right to privacy and confiden-
16 tiality of: (1) Birth parents whose children were
17 adopted; (2) the adoptees; and (3) the adoptive parents.
18 The purpose of this article is to: (1) Set up a mutual
19 consent voluntary adoption registry where birth
20 parents and adult adoptees may register their willing-
21 ness to the release of identifying information to each
22 other; (2) to provide for the disclosure of such identi-
23 fying information to birth parents or adoptees, or both,
24 through a social worker employed by a licensed
25 adoption agency, provided each birth parent and the
26 adult adoptee voluntarily registers on his own; (3) to
27 provide for the transmission of nonidentifying health
28 and social and genetic history to the adult adoptees,
29 birth parents and other specified persons; and (4) to
30 provide for disclosure of identifying information for
31 cause shown.

§48-4A-2. Definitions.

1 (a) As used in this article:

2 (1) "Adoptee" means a person who has been legally
3 adopted in the state of West Virginia.

4 (2) "Adoption" means the judicial act of creating the

5 relationship of parent and child where it did not exist
6 previously.

7 (3) "Adult" means a person eighteen or more years
8 of age.

9 (4) "Agency" means any public or voluntary organi-
10 zation licensed or approved pursuant to the laws of
11 any jurisdiction within the United States to place
12 children for adoption.

13 (5) "Genetic and social history" means a comprehen-
14 sive report, when obtainable, on the birth parents,
15 siblings to the birth parents, if any, other children of
16 either birth parent, if any, and parents of the birth
17 parents, which shall contain the following information:

18 (i) Medical history;

19 (ii) Health status;

20 (iii) Cause of and age at death;

21 (iv) Height, weight, eye and hair color;

22 (v) Ethnic origins;

23 (vi) Where appropriate, levels of educational and
24 professional achievement; and

25 (vii) Religion, if any.

26 (6) "Health history" means a comprehensive report
27 of the child's health status at the time of placement for
28 adoption and medical history, including neonatal,
29 psychological, physiological and medical care history.

30 (7) "Mutual consent voluntary adoption registry" or
31 "registry" means a place provided for herein where
32 eligible persons as described in section three of this
33 article may indicate their willingness to have their
34 identity and whereabouts disclosed to each other
35 under conditions specified in this article.

36 (8) "Putative father" means any man not deemed or
37 adjudicated under the laws of a jurisdiction of the
38 United States to be the father of genetic origin of a
39 child and who claims or is alleged to be the father of
40 genetic origin of such child.

41 (b) As used in this article, pronouns of the masculine
42 gender include the feminine.

§48-4A-3. Prohibited conduct.

1 (a) No person, agency, entity or organization of any
2 kind, including, but not limited to, any officer or
3 employee of this state and any employee, officer or
4 judge of any court of this state, may disclose any
5 confidential information relating to an adoption except
6 as provided in this article or pursuant to a court order.
7 Any employer who knowingly or negligently allows
8 any employee to disclose information in violation of
9 this article is subject to the penalties provided in
10 subsection (b) of this section, together with the
11 employee who made any disclosure prohibited by this
12 law.

13 (b) Any person, agency, entity or organization of any
14 kind who discloses information in violation of this law
15 is liable to the parties so injured in an action to
16 recover damages in respect thereto.

§48-4A-4. Nondisclosure.

1 (a) Notwithstanding any other provision of law, the
2 information acquired by any registry may not be
3 disclosed under any sunshine or freedom of informa-
4 tion legislation, rules or practice.

5 (b) Notwithstanding any other provision of law, no
6 person, group of persons, or entity, including an
7 agency, may file a class action to force the registry to
8 disclose identifying information.

§48-4A-5. Rulemaking.

1 The division of human services shall establish and
2 maintain the mutual consent voluntary adoption
3 registry, except that the division of human services
4 may contract out the function of establishing and
5 maintaining the registry to a licensed voluntary
6 agency with expertise in providing post-legal adoption
7 services in which case the agency shall establish and
8 maintain the registry that would otherwise be oper-
9 ated by the division.

10 The commissioner of the department of human
11 services shall promulgate and adopt such rules as are
12 necessary for implementing this article.

**§48-4A-6. The compilation of nonidentifying information on
health history and social and genetic history.**

1 (a) Prior to placement for adoption, the court shall
2 require that the licensed adoption agency or, where an
3 agency is not involved, the person, entity or organiza-
4 tion handling the adoption, shall compile and provide
5 to the prospective adoptive parents a detailed written
6 health history and genetic and social history of the
7 child which excludes information which would iden-
8 tify birth parents or members of a birth parent's
9 family and is set forth in a document that is separate
10 from any document containing such identifying infor-
11 mation. The court, or an agency designated by the
12 court, or judge thereof, shall provide agency, person,
13 or any other organization handling the adoption with
14 forms which shall be utilized in the acquisition of the
15 above-described detailed nonidentifying written health
16 history and genetic and social history of the child. If
17 the records cannot be obtained, the court shall make
18 specific findings as to why the records are
19 unobtainable.

20 (b) Records containing such nonidentifying informa-
21 tion and which are set forth on a document described
22 in subsection (a) above, separate from any document
23 containing identifying data:

24 (1) Shall be retained by the clerk of the court for
25 ninety-nine years; and

26 (2) Shall be available upon request, throughout the
27 time specified in subsection (b)(1) of this section
28 together with any additional nonidentifying informa-
29 tion which may have been added on health or on
30 genetic and social history, but which excludes infor-
31 mation identifying any birth parent or member of a
32 birth parent's family, or the adoptee or any adoptive
33 parent of the adoptee, to the following persons only:

34 (i) The adoptive parents of the child or, in the event

35 or death of the adoptive parents, the child's guardian;

36 (ii) The adoptee upon reaching the age of eighteen;

37 (iii) In the event of the death of the adoptee, the
38 adoptee's spouse if he is the legal parent of the
39 adoptee's child or the guardian of any child of the
40 adoptee;

41 (iv) In the event of the death of the adoptee, any
42 progeny of the adoptee who is age eighteen or older;
43 and

44 (v) The birth parent of the adoptee.

45 The actual and reasonable cost of providing noniden-
46 tifying health history and genetic and social history
47 shall be paid by the person requesting such informa-
48 tion. This provision is subject to sections of this article
49 which provide for the adoptee obtaining information
50 by petition to the court. If any provision of this article
51 is held invalid, the remaining provisions of the article
52 shall continue in effect.

**§48-4A-7. Use of the mutual consent voluntary adoption
registry.**

1 (a) Use of a mutual consent voluntary adoption
2 registry for obtaining identifying information about
3 birth parents and adult adoptees shall be available
4 only to birth parents and adult adoptees, except that
5 no adult adoptee who has a sibling in this adoptive
6 family who is under the age of eighteen years may use
7 the registry.

8 (b) No birth parent may be eligible to use the
9 registry until after his genetic offspring, who was
10 adopted has reached his eighteenth birthday.

11 (c) A birth father whose name has appeared in the
12 original sealed birth certificate or who has legitimated
13 or formally acknowledged the child as provided by law
14 or who has signed a voluntary abandonment and
15 release for the child's adoption as provided by state
16 law may register.

17 (d) Any birth parent who in terminating his paren-

18 tal rights used an alias name, and this alias is listed in
19 the original sealed birth record, may register if the
20 agency or, in cases where no agency was involved, the
21 organization, entity or person who was involved,
22 certifies to the court that the individual seeking to
23 register used, as an alias, the name set forth in the
24 original sealed birth certificate.

§48-4A-8. Operation of the mutual consent voluntary adoption registry.

1 (a) *Prerequisites to disclosure of identifying infor-*
2 *mation.* — The adult adoptee and each birth parent,
3 may voluntarily, without having been contacted by
4 any employee or agent of the entity operating the
5 registry, place his name in the appropriate registry
6 before any disclosure or identifying information can
7 be made. A qualified person may register by submit-
8 ting a notarized affidavit to the appropriate registry
9 stating his name, address and telephone number and
10 his willingness to be identified solely to the other
11 relevant persons who register. No registration may be
12 accepted until the prospective registrant submits
13 satisfactory proof of his identity in accord with the
14 provisions specified in section six of this article. The
15 failure of any of the three above described persons to
16 file a notarized affidavit with the registry for any
17 reason, including death or disability, precludes the
18 disclosure of identifying information to those relevant
19 persons who do register.

20 (b) *Counseling.* — Upon registering, the registrant
21 shall participate in not less than one hour of counsel-
22 ing with a social worker employed by the entity that
23 operates the registry, except if a birth parent or adult
24 adoptee is domiciled outside the state, he shall obtain
25 counseling from a social worker employed by a
26 licensed agency in that other state selected by the
27 entity that operates the registry. When an eligible
28 person registers concerning an adoption that was
29 arranged through an agency which has not merged or
30 otherwise ceased operations, and that same agency is
31 not operating the registry, the entity operating the
32 registry shall notify by certified mail the agency which

33 handled the adoption within ten business days after
34 the date of registration.

35 (c) *Cases where disclosure of identifying information*
36 *cannot occur.* — In any case where the identity of the
37 birth father was unknown to the birth mother, or
38 where the administrator learns that one or both of the
39 birth parents are deceased, this information shall be
40 shared with the adult adoptee. In these kinds of cases,
41 the adoptee will not be able to obtain identifying
42 information through the registry, and he would be told
43 of his right to pursue whatever right otherwise exists
44 by law to petition a court to release the identifying
45 information.

46 (d) *Matching and disclosure procedures.* —

47 (1) Each mutual consent voluntary adoption registry
48 shall be operated under the direction of an
49 administrator.

50 (2) A person eligible to register may request the
51 administrator to disclose identifying information by
52 filing an affidavit which sets forth the following:

53 (i) The current name and address of the affiant;

54 (ii) Any previous name by which the affiant was
55 known;

56 (iii) The original and adopted names, if known, of
57 the adopted child;

58 (iv) The place and date of birth of the adopted child;
59 or

60 (v) The name and address of the adoption agency or
61 other entity, organization or person placing the
62 adopted child, if known.

63 The affiant shall notify the registry of any change in
64 name or location which occurs subsequent to his filing
65 the affidavit. The registry shall have no duty to search
66 for the affiant who fails to register his most recent
67 address.

68 (e) The administrator of the mutual consent volun-
69 tary adoption registry shall process each affidavit in an

70 attempt to match the adult adoptee and the birth
71 parents. Such processing shall include research from
72 agency records, when available, and when agency
73 records are not available, research from court records
74 to determine conclusively whether the affiants match.

75 (f) The administrator shall determine that there is a
76 match when the adult adoptee and, the birth mother
77 or the adult adoptee and the birth father have each
78 filed affidavits with the mutual consent voluntary
79 adoption registry and have each received the counsel-
80 ing required in subsection (a) of this section.

81 (g) When a match has taken place, the department
82 shall directly notify all parties through a direct and
83 confidential contact. The contact shall be made by an
84 employee or agent of the agency receiving the assign-
85 ment and shall be made face-to-face, rather than by
86 mail, telephone or other indirect means. The employee
87 or agent shall be a trained social worker who has
88 expertise in post-legal adoption services.

89 (h) *Retention of data by the registry.* — Any affidav-
90 its filed and other information collected shall be
91 retained for ten years following the date of registra-
92 tion by any qualified person to which the information
93 pertains. Any qualified person who registers may
94 renew his registration for ten additional years within
95 one hundred eighty days prior to the last day of ten
96 years from the date of initial registration.

97 (i) *Scope of information obtained by the mutual*
98 *consent voluntary adoption registry.* — A mutual
99 consent voluntary adoption registry shall obtain only
100 information necessary for identifying a birth parent or
101 adult adoptee and in no event shall obtain information
102 of any kind pertaining to the adoptive parents, any
103 siblings to the adult adoptee who are children of the
104 adoptive parents, the income of anyone and reasons
105 for adoptive placement.

106 (j) *Fees for operations of the mutual consent volun-*
107 *tary adoption registry.* — All costs for establishing and
108 maintaining a mutual consent voluntary adoption
109 registry shall be obtained through user's fees charged
110 to all persons who register.

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

Somer Heck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Samuel E. Atkins
.....
Clerk of the Senate

Donald L. Vapp
.....
Clerk of the House of Delegates

Walter Smith
.....
President of the Senate

R. B. C. C.
.....
Speaker House of Delegates

The within *is approved* this the *12*.....
day of *April*....., 1991.

Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/91

Time 4:35 PM