WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4130

(By Delegates Smith, Lawrence and Hunt)

Passed March 8, 2012
To Take Effect Ninety Days From Passage
AN ACT to repeal §48-22-803 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-22-303 of said code; and to amend and reenact said code by adding thereto a new section, designated §61-2-14h, all relating to crimes against the person; increasing criminal penalties relating to the increase the penalty for the criminal offenses involving money in exchange for locating, providing or procuring a minor child in certain circumstances; providing circumstances deemed abuse and neglect; and providing exceptions from thereto for certain acts relating to lawful adoptions.

Be it enacted by the Legislature of West Virginia:

That §48-22-803 of the Code of West Virginia, 1931, as amended, be repealed; that §48-22-303 of the code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-2-14h, all to read as follows:
CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 22. ADOPTION.

§48-22-303. Content of consent or relinquishment.

(a) A consent or relinquishment as required by the provisions of section 22-301 must be written in plain English or, if the person executing the consent or relinquishment does not understand English, in the person’s primary language. The form of the consent or relinquishment shall include the following, as appropriate:

(1) The date, place and time of the execution of the consent or relinquishment;

(2) The name, date of birth and current mailing address of the person executing the consent or relinquishment;

(3) The date, place of birth and the name or pseudonym ("Baby Boy _____ or Baby Girl _____") of the minor child;

(4) The fact that the document is being executed more than seventy-two hours after the birth of the child;

(5) If a consent, that the person executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the child by, an adoptive parent or parents whose name or names may, but need not be, specified;

(6) If a relinquishment, that the person executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purposes of adoption;
(7) If a consent, that it authorizes the prospective adoptive parents, or if a relinquishment, that it authorizes the agency, to consent to medical treatment of the child pending any adoption proceeding;

(8) That after the consent or relinquishment is signed and acknowledged, it is final and, unless revoked in accordance with the provisions of section 22-305, it may not be revoked or set aside for any other reason;

(9) That the adoption will forever terminate all parental rights, including any right to visit or communicate with the child and any right of inheritance;

(10) That the adoption will forever terminate all parental obligations of the person executing the consent or relinquishment;

(11) That the termination of parental rights and obligations is permanent whether or not any agreement for visitation or communication with the child is subsequently performed;

(12) That the person executing the consent or relinquishment does so of his or her own free will and the consent or relinquishment has not been obtained by fraud or duress;

(13) That the person executing the consent or relinquishment has:

(i) Received a copy of the consent or relinquishment;

(ii) Been provided the information and afforded the opportunity to participate in the voluntary adoption registry, pursuant to the provisions of article 23-101, et seq.;
(iii) Been advised of the availability of counseling;

(iv) Been advised of the consequences of misidentifying the other birth parent; and

(v) If a birth mother, been advised of the obligation to provide the information required by the provisions of section seven of this article in the case of an unknown father;

(14) That the person executing the consent or relinquishment has not received or been promised any money or anything of value for the consent or relinquishment, other than payments authorized by the provisions of section fourteen-h, article two, chapter sixty-one;

(15) Whether the child is an “Indian child” as defined in the Indian Child Welfare Act, 25 U.S.C. §1903;

(16) That the person believes the adoption of the child is in the child’s best interest; and

(17) That the person who is consenting or relinquishing expressly waives notice of any proceeding for adoption unless the adoption is contested, appealed or denied.

(b) A consent or relinquishment may provide explicitly for its conditional revocation if:

(1) Another person whose consent or relinquishment is required does not execute the same within a specified period;

(2) A court determines not to terminate another person’s parental relationship to the child; or

(3) In a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.
(c) A consent or relinquishment shall also include:

(1) If a consent, the name, address, telephone and facsimile numbers of the lawyer representing the prospective adoptive parents; or

(2) If a relinquishment, the name, address, telephone and facsimile numbers of the agency to which the child is being relinquished; and

(3) Specific instructions on how to revoke the consent or relinquishment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives or agrees to give to another person money, property, service or other thing of value in consideration for the recipient’s locating, providing or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

(b) Any person who knowingly receives, accepts or offers to accept money, property, service or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.
(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, may be confined in the state correctional facility for not less than one year nor more than ten years or, in the discretion of the court, be confined in jail not more than one year and fined not less than $2,000 nor more than $10,000.

(d) A child whose parent, guardian or custodian has sold or attempted to sell said child in violation of the provisions of article twenty-two, chapter forty-eight may be deemed an abused child as defined by section three, article one, chapter forty-nine of this code. The court may place such a child in the custody of the department of health and human resources or with such other responsible person as the best interests of the child dictate.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the department of health and human resources or any licensed or duly authorized adoption or child-placing agency.

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with the pregnancy, birth and adoption proceedings.

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother.

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement or placement of a minor child for adoption.
(f) At the final hearing on the adoption as provided in article twenty-two, chapter forty-eight of this code, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 2nd day of April, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 27 2012

Time 1:30 PM