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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 61

(By Senator BOWMAN, ET AL)



PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

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SENATE

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COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 61

(SENATORS BOWMAN, WHITE, WOOTON, SNYDER,
KIMBLE AND ANDERSON, *original sponsors*)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact sections one, three, four, five, six, seven, eight, nine, twelve and sixteen, article four, chapter forty-eight of said code; to further amend said article by adding thereto five new sections, designated sections three-a, three-b, three-c, eight-a and eight-b; and to amend and reenact section one, article three, chapter forty-nine of said code, all relating generally to adoption proceedings; creating a tax credit for nonfamily adoptions; defining and redefining terms;

establishing persons whose consent or relinquishment is required; setting forth requirements for the execution of consents or relinquishments; establishing required contents of consents or relinquishments; establishing conduct constituting abandonment by birth parent; providing for consent by parents under eighteen years of age; providing for the revocation of consent or relinquishment for adoption; requiring disclosure of certain information upon delivery of child for adoption; establishing when adoption petition may be filed; expanding required contents of adoption petition; expanding and revising notice provisions; setting forth persons entitled to notice; changing the information required for notice; providing for notice to unknown fathers; establishing hearing procedures; setting forth evaluation requirements when discreet inquiries are conducted; setting forth procedures and limitations on challenges to adoption decrees; authorizing the payment of certain fees and expenses of the birth mother subject to approval by the circuit court; establishing criminal penalties; providing for agency adoptions and relinquishment requirements; requiring department to consider grandparents as adoptive parents; and requiring the department to offer certain counseling services.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; that sections one, three, four, five, six, seven, eight, nine, twelve and sixteen, article four, chapter forty-eight of said code be amended and reenacted; that said article be further amended by adding thereto five new sections, designated sections three-a, three-b, three-c, eight-a and eight-b; and that section one, article three, chapter forty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

PART I. GENERAL.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-10a. Credit for nonfamily adoption.

1 A one time credit against the tax imposed by the provi-
2 sions of this article shall be allowed as follows:

3 *Nonfamily adoptions.* — For nonfamily adoptions, the
4 credit is equal to two thousand dollars which may be
5 taken in the year of the adoption of each nonfamily child,
6 whose age at adoption is under eighteen years. This credit
7 may, at the option of the taxpayer, be taken over a period
8 of three years.

9 For the purpose of this section and credit “nonfamily
10 adoptions” means adoptions of a child or children by a
11 taxpayer or taxpayers which child or children are not
12 related to the taxpayer or taxpayers by blood or marriage.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

§48-4-1. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (a) “Abandonment” means any conduct by the birth
4 mother, legal father, determined father, outsider father,
5 unknown father or putative father that demonstrates a
6 settled purpose to forego all duties and relinquish all
7 parental claims to the child;

8 (b) “Adoptive parents” or “adoptive mother” or “adop-
9 tive father” means those persons who, after adoption, are
10 the mother and father of the child;

11 (c) “Agency” means a public or private entity, including
12 the department of health and human resources, that is
13 authorized by law to place children for adoption;

14 (d) “Birth father” means the biological father of the
15 child;

16 (e) “Birth mother” means the biological mother of the
17 child;

18 (f) “Birth parents” mean both the biological father and
19 the biological mother of the child;

20 (g) “Consent” means the voluntary surrender to an

21 individual, not an agency, by a minor child's parent or
22 guardian, for purposes of the child's adoption, of the
23 rights of the parent or guardian with respect to the child,
24 including the legal and physical custody of the child;

25 (h) "Determined father" means, before adoption, a
26 person: (1) In whom paternity has been established
27 pursuant to the provisions of article six, chapter forty-
28 eight-a of this code, whether by adjudication or acknowl-
29 edgment as set forth therein; or (2) who has been other-
30 wise judicially determined to be the biological father of
31 the child entitled to parental rights; or (3) who has as-
32 serted his paternity of the child in an action commenced
33 pursuant to the provisions of article six, chapter forty-
34 eight-a of this code, that is pending at the time of the
35 filing of the adoption petition;

36 (i) "Legal father" means, before adoption, the male
37 person having the legal relationship of parent to a child:
38 (1) Who is married to its mother at the time of conception;
39 or (2) who is married to its mother at the time of birth of
40 the child; or (3) who is the biological father of the child
41 and who marries the mother before an adoption of the
42 child;

43 (j) "Marital child" means a child born or conceived
44 during marriage;

45 (k) "Nonmarital child" means a child not born or
46 conceived during marriage;

47 (l) "Outsider father" means the biological father of a
48 child born to or conceived by the mother while she is
49 married to another man who is not the biological father of
50 the child;

51 (m) "Putative father" means, before adoption, any man
52 named by the mother as a possible biological father of the
53 child pursuant to the provisions of section seven of this
54 article, who is not a legal or determined father;

55 (n) "Relinquishment" means the voluntary surrender to
56 an agency by a minor child's parent or guardian, for
57 purposes of the child's adoption, of the rights of the parent
58 or guardian with respect to the child, including the legal

59 and physical custody of the child;

60 (o) "Stepparent adoption" means an adoption in which
61 the petitioner for adoption is married to one of the birth
62 parents of the child or to an adoptive parent of the child;
63 and

64 (p) "Unknown father" means a biological father whose
65 identity the biological mother swears is unknown to her
66 before adoption, pursuant to the provisions of section
67 seven of this article.

**§48-4-3. Persons whose consent or relinquishment is required;
exceptions.**

1 (a) Subject to the limitations hereinafter set forth,
2 consent to or relinquishment for adoption of a minor child
3 is required of:

4 (1) The parents or surviving parent, whether adult or
5 infant, of a marital child;

6 (2) The outsider father of a marital child who has been
7 adjudicated to be the father of the child or who has filed
8 a paternity action which is pending at the time of the
9 filing of the petition for adoption;

10 (3) The birth mother, whether adult or infant, of a
11 nonmarital child; and

12 (4) The determined father.

13 (b) Consent or relinquishment shall not be required of a
14 parent or of any other person having custody of the
15 adoptive child:

16 (1) Whose parental rights have been terminated pursu-
17 ant to the provisions of article three, chapter forty-nine of
18 this code;

19 (2) Whom the court finds has abandoned the child as set
20 forth in section three-c of this article; or

21 (3) Who, in a stepparent adoption, is the birth parent or
22 adoptive parent of the child and is married to the petition-
23 ing adoptive parent. In such stepparent adoption, the
24 parent must assent to the adoption by joining as a party to

25 the petition for adoption.

26 (c) If the mother, legal father or determined father is
27 under disability, the court may order the adoption if it
28 finds:

29 (1) The parental rights of the person are terminated,
30 abandoned or permanently relinquished;

31 (2) The person is incurably insane; or

32 (3) The disability arises solely because of age and an
33 otherwise valid consent or relinquishment has been given.

34 (d) If all persons entitled to parental rights of the child
35 sought to be adopted are deceased or have been deprived
36 of the custody of the child by law, then consent or relin-
37 quishment is required of the legal guardian or of any other
38 person having legal custody of the child at the time. If
39 there is no legal guardian nor any person who has legal
40 custody of the child, then consent or relinquishment is
41 required from some discreet and suitable person appointed
42 by the court to act as the next friend of the child in the
43 adoption proceedings.

44 (e) If one of the persons entitled to parental rights of the
45 child sought to be adopted is deceased, only the consent or
46 relinquishment of the surviving person entitled to parental
47 rights is required.

48 (f) If the child to be adopted is twelve years of age or
49 over, the consent of the child is required to be given in the
50 presence of a judge of a court of competent jurisdiction,
51 unless for extraordinary cause, the requirement of such
52 consent is waived by the court.

53 (g) Any consent to adoption or relinquishment of
54 parental rights shall have the effect of authorizing the
55 prospective adoptive parents or the agency to consent to
56 medical treatment for the child, whether or not such
57 authorization is expressly stated in the consent or relin-
58 quishment.

§48-4-3a. Timing and execution of consent or relinquishment.

1 (a) No consent or relinquishment may be executed

2 before the expiration of seventy-two hours after the birth
3 of the child to be adopted.

4 (b) A consent or relinquishment executed by a parent or
5 guardian as required by the provisions of section three of
6 this article must be signed and acknowledged in the
7 presence of one of the following:

8 (1) A judge of a court of record;

9 (2) A person whom a judge of a court of record desig-
10 nates to take consents or relinquishments;

11 (3) A notary public;

12 (4) A commissioned officer on active duty in the military
13 service of the United States, if the person executing the
14 consent or relinquishment is in military service; or

15 (5) An officer of the foreign service or a consular officer
16 of the United States in another country, if the person
17 executing the consent or relinquishment is in that country.

§48-4-3b. Content of consent or relinquishment.

1 (a) A consent or relinquishment as required by the
2 provisions of section three of this article must be written
3 in plain English or, if the person executing the consent or
4 relinquishment does not understand English, in the
5 person's primary language. The form of the consent or
6 relinquishment shall include the following, as appropriate:

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

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

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

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

15 (5) If a consent, that the person executing the document
16 is voluntarily and unequivocally consenting to the transfer
17 of legal and physical custody to, and the adoption of the
18 child by, an adoptive parent or parents whose name or

19 names may, but need not be, specified;

20 (6) If a relinquishment, that the person executing the
21 relinquishment voluntarily consents to the permanent
22 transfer of legal and physical custody of the child to the
23 agency for the purposes of adoption;

24 (7) If a consent, that it authorizes the prospective
25 adoptive parents, or if a relinquishment, that it authorizes
26 the agency, to consent to medical treatment of the child
27 pending any adoption proceeding;

28 (8) That after the consent or relinquishment is signed
29 and acknowledged, it is final and, unless revoked in
30 accordance with the provisions of section five of this
31 article, it may not be revoked or set aside for any other
32 reason;

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

36 (10) That the adoption will forever terminate all paren-
37 tal obligations of the person executing the consent or
38 relinquishment;

39 (11) That the termination of parental rights and obliga-
40 tions is permanent whether or not any agreement for
41 visitation or communication with the child is subsequently
42 performed;

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

46 (13) That the person executing the consent or relinquish-
47 ment has:

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

49 (ii) Been provided the information and afforded the
50 opportunity to participate in the voluntary adoption
51 registry, pursuant to the provisions of article four-a of this
52 chapter;

53 (iii) Been advised of the availability of counseling;

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

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

60 (14) That the person executing the consent or relinquish-
61 ment has not received or been promised any money or
62 anything of value for the consent or relinquishment, other
63 than payments authorized by the provisions of section
64 sixteen of this article;

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

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

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

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

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

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

79 (3) In a direct placement for adoption, a petition for
80 adoption by a prospective adoptive parent, named or
81 described in the consent, is denied or withdrawn.

82 (c) A consent or relinquishment shall also include:

83 (1) If a consent, the name, address, telephone and
84 facsimile numbers of the lawyer representing the prospec-
85 tive adoptive parents; or

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

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

§48-4-3c. Conduct presumptively constituting abandonment.

1 (a) Abandonment of a child over the age of six months
2 shall be presumed when the birth parent:

3 (1) Fails to financially support the child within the
4 means of the birth parent; and

5 (2) Fails to visit or otherwise communicate with the
6 child when he or she knows where the child resides, is
7 physically and financially able to do so and is not pre-
8 vented from doing so by the person or authorized agency
9 having the care or custody of the child: *Provided*, That
10 such failure to act continues uninterrupted for a period of
11 six months immediately preceding the filing of the adop-
12 tion petition.

13 (b) Abandonment of a child under the age of six months
14 shall be presumed when the birth father:

15 (1) Denounces the child's paternity any time after
16 conception;

17 (2) Fails to contribute within his means, toward the
18 expense of the prenatal and postnatal care of the mother
19 and the postnatal care of the child;

20 (3) Fails to financially support the child within father's
21 means; and

22 (4) Fails to visit the child when he or she knows where
23 the child resides: *Provided*, That such denunciations and
24 failure to act continue uninterrupted from the time that
25 the birth father was told of the conception of the child
26 until the time the petition for adoption was filed.

27 (c) Abandonment of a child shall be presumed when the
28 unknown father fails, prior to the entry of the final
29 adoption order, to make reasonable efforts to discover that
30 a pregnancy and birth have occurred as a result of his
31 sexual intercourse with the birth mother.

32 (d) Notwithstanding any provision in this section to the
33 contrary, any birth parent shall have the opportunity to

34 demonstrate to the court the existence of compelling
 35 circumstances preventing said parent from supporting,
 36 visiting or otherwise communicating with the child:
 37 *Provided*, That in no event may incarceration provide such
 38 a compelling circumstance if the crime resulting in the
 39 incarceration involved a rape in which the child was
 40 conceived.

§48-4-4. Consent or relinquishment by infants.

1 If a person who has executed a consent to or relinquish-
 2 ment for adoption is under eighteen years of age at the
 3 time of the filing of the petition, and such infant parent is
 4 a resident of the state, the consent or relinquishment shall
 5 be specifically reviewed and approved by the court and a
 6 guardian ad litem may be appointed to represent the
 7 interests of the infant parent. The guardian ad litem shall
 8 conduct a discreet inquiry regarding the consent or
 9 relinquishment given, and may inquire of any person
 10 having knowledge of the consent or relinquishment. If the
 11 guardian ad litem finds reasonable cause to believe that
 12 the consent or relinquishment was obtained by fraud or
 13 duress, the court may request the infant parent to appear
 14 before the court or at a deposition, so that inquiry may be
 15 made regarding the circumstances surrounding the
 16 execution of the consent or relinquishment. The failure of
 17 the court to appoint a guardian ad litem is not grounds for
 18 setting aside a decree of adoption.

§48-4-5. Revocation of consent or relinquishment for adoption.

1 (a) Parental consent or relinquishment, whether given by
 2 an adult or minor, may be revoked only if:

3 (1) The person who executed the consent or relinquish-
 4 ment and the prospective adoptive parent named or
 5 described in the consent or the lawyer for said adoptive
 6 parent, or the agency in case of relinquishment, agree to
 7 its revocation prior to the entry of an adoption order; or

8 (2) The person who executed the consent or relinquish-
 9 ment proves by clear and convincing evidence, in an
 10 action filed either within six months of the date of the
 11 execution of the consent or relinquishment or prior to the

12 date an adoption order is final, whichever date is later,
13 that the consent or relinquishment was obtained by fraud
14 or duress; or

15 (3) The person who executed the consent or relinquish-
16 ment proves by a preponderance of the evidence, prior to
17 the entry of an adoption order, that a condition allowing
18 revocation as expressly set forth in the consent or relin-
19 quishment has occurred; or

20 (4) The person who executed the consent or relinquish-
21 ment proves by clear and convincing evidence, prior to the
22 entry of an adoption order, that the consent or relinquish-
23 ment does not comply with the requirements set forth in
24 this article.

25 (b) If the custody of a child during the pendency of a
26 petition to revoke a consent or relinquishment is in issue,
27 the court shall conduct a hearing, within thirty days of
28 service of notice upon the respondent, to determine the
29 issue of temporary custody. The court shall award such
30 custody based upon the best interests of the child.

§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
3 adopting parent or parents shall be entitled to receive
4 from such person a written recital of all known circum-
5 stances surrounding the birth, medical and family medical
6 history of the child, and an itemization of any facts or
7 circumstances unknown concerning the child's parentage
8 or that may require further development in the form of an
9 affidavit from the birth mother consistent with the
10 provisions of section seven of this article.

11 (b) The petition for adoption may be filed at any time
12 after the child who is the subject of the adoption is born,
13 the adoptive placement determined and all consents or
14 relinquishments that can be obtained have been executed.
15 The hearing on the petition may be held no sooner than
16 forty-five days after the filing of the petition and only
17 after the child has lived with the adoptive parent or
18 parents for a period of six months, proper notice of the

19 petition has been given and all necessary consents or
20 relinquishments have been executed and submitted or the
21 rights of all nonconsenting birth parents have otherwise
22 been terminated.

§48-4-7. Petition and appendix.

1 (a) The petition shall be verified and set forth:

2 (1) The name, age and place of residence of the peti-
3 tioner or petitioners, and of the child, and the name by
4 which the child shall be known;

5 (2) Whether such child is possessed of any property and
6 a full description of the same, if any;

7 (3) Whether the petitioner or petitioners know the
8 identity of the persons entitled to parental rights or, that
9 the same are unknown to the petitioner or petitioners; and

10 (4) Whether and on what basis the parental rights of any
11 birth parents should be terminated during the pendency of
12 the adoption petition.

13 (b) In the case of an unknown father, an affidavit signed
14 by the birth mother setting forth the following informa-
15 tion must be attached to the petition:

16 (1) Whether the birth mother was married at the proba-
17 ble time of conception of the child, or at a later time, and
18 if so, the identity and last known address of such man;

19 (2) Whether the birth mother was cohabiting with a man
20 at the probable time of conception of the child, and if so,
21 the identity of such man, his last known address and why
22 the woman contends that such man is not the biological
23 father of the child;

24 (3) Whether the birth mother has received payments or
25 promise of support from any man with respect to the child
26 or her pregnancy, and if so, the identity of such man, his
27 last known address and why the birth mother contends
28 that such man is not the biological father of the child;

29 (4) Whether the birth mother has named any man as the
30 father on the birth certificate of the child or in connection
31 with applying for or receiving public assistance, and if so,

32 the identity of such man, his last known address and why
33 the birth mother contends such man is not the biological
34 father of the child;

35 (5) Whether the birth mother identified any man as the
36 father to any hospital personnel, and if so, the identity of
37 such man, his last known address, the name and address
38 of the hospital and why the birth mother now contends
39 such man is not the biological father of the child;

40 (6) Whether the birth mother has informed any man that
41 he may be the biological father of the child, and if so, the
42 identity of such man, his last known address and why the
43 birth mother now contends such man is not the biological
44 father of the child;

45 (7) Whether any man has formally or informally ac-
46 knowledged or claimed paternity of the child in any
47 jurisdiction at the time of the inquiry, and if so, the
48 identity of such man, his last known address and why the
49 birth mother contends such man is not the biological
50 father of the child;

51 (8) That the birth mother has been advised that the
52 failure to identify or the misidentification of the birth
53 father can result in delays and disruptions in the process-
54 ing of the adoption petition;

55 (9) That the birth mother has been informed that her
56 statement concerning the identity of the father will be
57 used only for the limited purposes of adoption and that
58 once the adoption is complete, such identity will be sealed;
59 and

60 (10) That the birth mother has been advised of the
61 remedies available to her for protection against domestic
62 violence pursuant to the provisions of article two-a of this
63 chapter.

64 (c) In the event the birth mother is deceased or her
65 identity or whereabouts are unknown, no such affidavit
66 shall be required.

67 (d) The affidavit of the birth mother in the case of an
68 unknown father shall be executed before any person

69 authorized to witness a consent or relinquishment pursu-
70 ant to the provisions of section three-a of this article. Any
71 affidavit filed with the petition pursuant to the provisions
72 of this section shall be sealed in the court file and may not
73 be opened except by court order upon a showing of good
74 cause.

75 (e) If the person petitioning for adoption is less than
76 fifteen years older than the child sought to be adopted,
77 such fact shall be set forth specifically in the petition. In
78 such case, the court shall grant the adoption only upon a
79 specific finding that notwithstanding the differences in
80 age of the petitioner and the child, such adoption is in the
81 best interest of the child: *Provided*, That in the case of a
82 stepparent adoption, such specific finding shall not be
83 required and an adoption shall not be denied on the sole
84 basis of proximity in age.

85 (f) The petition shall set forth any facts concerning the
86 circumstances of the birth of the child known to the
87 petitioner or petitioners. An effort shall be made to obtain
88 medical and social information, which information, along
89 with all nonidentifying information about the birth, shall
90 accompany the petition and be made a part of the
91 nonidentifying information to be sealed in the court file.

92 (g) Either the petition, the various consents or relin-
93 quishments attached thereto or filed in the cause, the
94 affidavit of the birth mother as set forth herein and/or an
95 appendix signed by counsel or other credible persons shall
96 fully disclose all that is known about the parentage of the
97 child.

§48-4-8. Who shall receive notice.

1 (a) Unless notice has been waived, notice of a proceeding
2 for adoption of a child must be served, within twenty days
3 after a petition for adoption is filed, upon:

4 (1) Any person whose consent to the adoption is required
5 pursuant to the provisions of section three of this article,
6 but notice need not be served upon a person whose
7 parental relationship to the child or whose status as a
8 guardian has been terminated;

9 (2) Any person whom the petitioner knows is claiming to
10 be the father of the child and whose paternity of the child
11 has been established pursuant to the provisions of article
12 six, chapter forty-eight-a of this code;

13 (3) Any person other than the petitioner who has legal or
14 physical custody of the child or who has visitation rights
15 with the child under an existing court order issued by a
16 court in this or another state;

17 (4) The spouse of the petitioner if the spouse has not
18 joined in the petition; and

19 (5) A grandparent of the child if the grandparent's child
20 is a deceased parent of the child and, before death, the
21 deceased parent had not executed a consent or relinquish-
22 ment or the deceased parent's parental relationship to the
23 child had not been otherwise terminated.

24 (b) The court shall require notice of a proceeding for
25 adoption to be served upon any person the court finds, at
26 any time during the proceeding, is:

27 (1) A person described in subsection (a) of this section
28 who has not been given notice;

29 (2) A person who has revoked consent or relinquishment
30 pursuant to the provisions of section five of this article; or

31 (3) A person who, on the basis of a previous relationship
32 with the child, a parent, an alleged parent or the peti-
33 tioner, can provide relevant information that the court, in
34 its discretion, wants to hear.

§48-4-8a. How notice is to be served.

1 (a) Notice shall be served on each person as required
2 under the provisions of section eight of this article, in
3 accordance with rule 4 of the West Virginia rules of civil
4 procedure for trial courts of record, except as otherwise
5 provided in this article.

6 (b) The notice shall inform the person, in plain language,
7 that his or her parental rights, if any, may be terminated
8 in the proceeding and that such person may appear and
9 defend any such rights within the required time after such

10 service. The notice shall also provide that if the person
11 upon whom notice is properly served fails to respond
12 within the required time after its service, said person may
13 not appear in or receive further notice of the adoption
14 proceedings.

15 (c) In the case of any person who is a nonresident or
16 whose whereabouts are unknown, service shall be
17 achieved: (1) By personal service; (2) by registered or
18 certified mail, return receipt requested, postage prepaid,
19 to the person's last known address, with instructions to
20 forward; or (3) by publication. If personal service is not
21 achieved and the person giving notice has any knowledge
22 of the whereabouts of the person to be served, including a
23 last known address, service by mail shall be first at-
24 tempted as provided herein. Any service achieved by mail
25 shall be complete upon mailing and shall be sufficient
26 service without the need for notice by publication. In the
27 event that no return receipt is received giving adequate
28 evidence of receipt of the notice by the addressee or of
29 receipt of the notice at the address to which the notice was
30 mailed or forwarded, or if the whereabouts of the person
31 is unknown, then the person required to give notice shall
32 cause service of notice by publication as a Class II publi-
33 cation in compliance with the provisions of article three,
34 chapter fifty-nine of this code, and the publication area
35 shall be the county where the proceedings are had, and in
36 the county where the person to be served was last known
37 to reside, except in cases of foreign adoptions where the
38 child is admitted to this country for purposes of adoptive
39 placement and the United States immigration and natu-
40 ralization service has issued the foreign-born child a visa
41 or unless good cause is shown for not publishing in the
42 county where the person was last known to reside. The
43 notice shall state the court and its address but not the
44 names of the adopting parents or birth mother, unless the
45 court so orders.

46 (d) In the case of a person under disability, service shall
47 be made on the person and his or her personal representa-
48 tive, or if there be none, on a guardian ad litem.

49 (e) In the case of service by publication or mail or service

50 on a personal representative or a guardian ad litem, the
51 person shall be allowed thirty days from the date of the
52 first publication or mailing or of such service on a per-
53 sonal representative or guardian ad litem in which to
54 appear and defend his or her parental rights.

§48-4-8b. Notice to an unknown father.

1 (a) In the case of an unknown father, the court shall
2 inspect the affidavit submitted pursuant to the provisions
3 of section seven of this article, consider any additional
4 evidence that the court, in its discretion, determines
5 should be produced, and determine whether said father
6 can be identified. The inspection and consideration of
7 any additional evidence by the court shall be accom-
8 plished as soon as practicable after the filing of the
9 petition, but no later than sixty days before the final
10 hearing on the adoption petition.

11 (b) If the court identifies a father pursuant to the
12 provisions of subsection (a) of this section, then notice of
13 the proceeding for adoption shall be served on the father
14 so identified in accordance with the provisions of section
15 eight-a of this article.

16 (c) If after consideration of the affidavit and/or the
17 consideration of further evidence, the court finds that
18 proper service cannot be made upon the father because his
19 identity is unknown, the court shall order publication of
20 the notice only if, on the basis of all information available,
21 the court determines that publication is likely to lead to
22 receipt of notice by the father. If the court determines
23 that publication or posting is not likely to lead to receipt
24 of notice, the court may dispense with the publication or
25 posting of a notice.

§48-4-9. Proceedings.

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

5 (1) It determines that no person retains parental rights
6 in such child except the petitioner and the petitioner's

7 spouse, or the joint petitioners;

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

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

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

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

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

37 (4) Personal references; and

38 (5) Other information deemed necessary by the court,
39 which may include a criminal background investigation.

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 be

43 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
46 be made, to be published as a Class II legal advertisement
47 in 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
50 located. At the time and place so named and upon due
51 proof of the publication of such notice, the court or judge
52 thereof shall make such appointment, and shall thereupon
53 assign a day for the hearing of such petition and the
54 examination of the 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 exami-
57 nation of the parties in interest, under oath, and of such
58 other witnesses as the court or judge thereof may deem
59 necessary to develop fully the standing of the petitioners
60 and their responsibility, and the status of the child sought
61 to be adopted; and if the court or judge thereof shall be of
62 the opinion from the testimony that the facts stated in the
63 petition are true, and if upon examination the court or
64 judge thereof is satisfied that the petitioner is, or the
65 petitioners are, of good moral character, and of respect-
66 able standing in the community, and are able properly to
67 maintain and educate the child sought to be adopted, and
68 that the best interests of the child would be promoted by
69 such adoption, then and in such case the court or judge
70 thereof shall make an order reciting the facts proved and
71 the name by which the child shall thereafter be known,
72 and declaring and adjudging that from the date of such
73 order, the rights, duties, privileges and relations, thereto-
74 fore existing between the child and those persons previ-
75 ously entitled to parental rights, shall be in all respects at
76 an end, and that the rights, duties, privileges and relations
77 between the child and his or her parent or parents by
78 adoption shall thenceforth in all respects be the same,
79 including the rights of inheritance, as if the child had been
80 born to such adopting parent or parents in lawful wed-
81 lock, except only as otherwise provided in this article:
82 *Provided*, That no such order shall disclose the names or
83 addresses of those persons previously entitled to parental

84 rights.

§48-4-12. Finality of order; challenges to order of adoption.

1 (a) An order or decree of adoption is a final order for
2 purposes of appeal to the supreme court of appeals on the
3 date when the order is entered. An order or decree of
4 adoption for any other purpose is final upon the expira-
5 tion of the time for filing an appeal when no appeal is
6 filed or when an appeal is not timely filed, or upon the
7 date of the denial or dismissal of any appeal which has
8 been timely filed.

9 (b) An order or decree of adoption may not be vacated,
10 on any ground, if a petition to vacate the judgment is filed
11 more than six months after the date the order is final.

12 (c) If a challenge is brought within the six-month period
13 by an individual who did not receive proper notice of the
14 proceedings pursuant to the provisions of this chapter, the
15 court shall deny the challenge, unless the individual
16 proves by clear and convincing evidence that the decree or
17 order is not in the best interest of the child.

18 (d) A decree or order entered under this chapter may not
19 be vacated or set aside upon application of a person who
20 waived notice, or who was properly served with notice
21 pursuant to this chapter and failed to respond or appear,
22 file an answer or file a claim of paternity within the time
23 allowed.

24 (e) A decree or order entered under this chapter may not
25 be vacated or set aside upon application of a person
26 alleging there is a failure to comply with an agreement for
27 visitation or communication with the adopted child:
28 *Provided*, That the court may hear a petition to enforce
29 the agreement, in which case the court shall determine
30 whether enforcement of the agreement would serve the
31 best interests of the child. The court may, in its sole
32 discretion, consider the position of a child of the age and
33 maturity to express such position to the court.

34 (f) The supreme court of appeals shall consider and issue
35 rulings on any petition for appeal from an order or decree
36 of adoption and petitions for appeal from any other order

37 entered pursuant to the provisions of this article as
38 expeditiously as possible. The circuit court shall consider
39 and issue rulings on any petition filed to vacate an order
40 or decree of adoption and any other pleadings or petitions
41 filed in connection with any adoption proceeding as
42 expeditiously as possible.

43 (g) When any minor has been adopted, he or she may,
44 within one year after becoming of age, sign, seal and
45 acknowledge before proper authority, in the county in
46 which the order of adoption was made, a dissent from
47 such adoption, and file such instrument of dissent in the
48 office of the clerk of the circuit court which granted said
49 adoption. The clerk of the county commission of such
50 county and the circuit clerk shall record and index the
51 same. The adoption shall be vacated upon the filing of
52 such instrument of dissent.

**§48-4-16. Prohibition of purchase or sale of child; penalty;
definitions; exceptions.**

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

9 (b) Any person who knowingly receives, accepts or offers
10 to accept money, property, service or other thing of value
11 to locate, provide or procure a minor child for any purpose
12 which entails a transfer of the legal or physical custody of
13 said child, including, but not limited to, adoption or
14 placement, is guilty of a felony and subject to fine and
15 imprisonment as provided herein.

16 (c) Any person who violates the provisions of this section
17 is guilty of a felony and, upon conviction thereof, may be
18 imprisoned in the penitentiary for not less than one year
19 nor more than five years or, in the discretion of the court,
20 be confined in jail not more than one year and fined not
21 less than one hundred dollars nor more than two thousand

22 dollars.

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

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

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

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

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

42 (4) Any fees or charges authorized by law or approved
43 by a court in a proceeding relating to the placement plan,
44 prospective placement or placement of a minor child for
45 adoption.

46 (f) At the final hearing on the adoption, an affidavit of
47 any fees and expenses paid or promised by the adoptive
48 parents shall be submitted to the court.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

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

1 (a) (1) Whenever a child welfare agency licensed to place
2 children for adoption or the department of health and
3 human resources has been given the permanent legal and
4 physical custody of any child and the rights of the mother

5 and the rights of the legal, determined, putative, outside
6 or unknown father of the child have been terminated by
7 order of a court of competent jurisdiction or by a legally
8 executed relinquishment of parental rights, the child
9 welfare agency or the department may consent to the
10 adoption of the child pursuant to the provisions of article
11 four, chapter forty-eight of this code.

12 (2) Relinquishment for an adoption to an agency or to
13 the department is required of the same persons whose
14 consent or relinquishment is required under the provisions
15 of section three, article four, chapter forty-eight of this
16 code. The form of any relinquishment so required shall
17 conform as nearly as practicable to the requirements
18 established in section three-b of said article and all other
19 provisions of said article providing for relinquishment for
20 adoption shall govern the proceedings herein.

21 (3) For purposes of any placement of a child for adoption
22 by the department, the department shall first consider the
23 suitability and willingness of any known grandparent or
24 grandparents to adopt the child. Once any such grandpar-
25 ents who are interested in adopting the child have been
26 identified, the department shall conduct a home study
27 evaluation, including home visits and individual inter-
28 views by a licensed social worker. If the department
29 determines, based on the home study evaluation, that the
30 grandparents would be suitable adoptive parents, it shall
31 assure that the grandparents are offered the placement of
32 the child prior to the consideration of any other prospec-
33 tive adoptive parents.

34 (4) The department shall make available, upon request,
35 for purposes of any private or agency adoption proceed-
36 ing, preplacement and post-placement counseling services
37 by persons experienced in adoption counseling, at no cost,
38 to any person whose consent or relinquishment is required
39 pursuant to the provision of article four, chapter forty-
40 eight of this code.

41 (b) (1) Whenever the mother has executed a relinquish-
42 ment pursuant to this section, and the legal, determined,
43 putative, outsider or unknown father, as those terms are

44 defined pursuant to the provisions of section one, article
45 four, chapter forty-eight of this code, has not executed a
46 relinquishment, the child welfare agency or the depart-
47 ment may, by verified petition, seek to have the father's
48 rights terminated based upon the grounds of abandonment
49 or neglect of said child. Abandonment may be established
50 in accordance with the provisions of section three-a,
51 article four, chapter forty-eight of this code.

52 (2) Unless waived by a writing acknowledged as in the
53 case of deeds or by other proper means, notice of the
54 petition shall be served on any person entitled to parental
55 rights of a child prior to its adoption who has not signed
56 a relinquishment of custody of the child.

57 (3) In addition, notice shall be given to any putative,
58 outsider or unknown father who has asserted or exercised
59 parental rights and duties to and with the child and who
60 has not relinquished any parental rights and such rights
61 have not otherwise been terminated, or who has not had
62 reasonable opportunity before or after the birth of the
63 child to assert or exercise such rights: *Provided*, That if
64 such child is more than six months old at the time such
65 notice would be required and such father has not asserted
66 or exercised his parental rights and he knew the where-
67 abouts of the child, then such father shall be presumed to
68 have had reasonable opportunity to assert or exercise such
69 rights.

70 (c) (1) Upon the filing of the verified petition seeking to
71 have the parental rights terminated, the court shall set a
72 hearing on the petition. A copy of the petition and notice
73 of the date, time and place of the hearing on said petition
74 shall be personally served on any respondent at least
75 twenty days prior to the date set for the hearing.

76 (2) Such notice shall inform the person that his parental
77 rights, if any, may be terminated in the proceeding and
78 that such person may appear and defend any such rights
79 within twenty days of such service. In the case of any
80 such person who is a nonresident or whose whereabouts
81 are unknown, service shall be achieved: (1) By personal
82 service; (2) by registered or certified mail, return receipt

83 requested, postage prepaid, to the person's last known
84 address, with instructions to forward; or (3) by publica-
85 tion. If personal service is not acquired, then if the person
86 giving notice shall have any knowledge of the where-
87 abouts of the person to be served, including a last known
88 address, service by mail shall be first attempted as herein
89 provided. Any such service achieved by mail shall be
90 complete upon mailing and shall be sufficient service
91 without the need for notice by publication. In the event
92 that no return receipt is received giving adequate evidence
93 of receipt of the notice by the addressee or of receipt of the
94 notice at the address to which the notice was mailed or
95 forwarded, or if the whereabouts of the person are un-
96 known, then the person required to give notice shall file
97 with the court an affidavit setting forth the circumstances
98 of any attempt to serve the notice by mail, and the diligent
99 efforts to ascertain the whereabouts of the person to be
100 served. If the court determines that the whereabouts of
101 the person to be served cannot be ascertained and that due
102 diligence has been exercised to ascertain such person's
103 whereabouts, then the court shall order service of such
104 notice by publication as a Class II publication in compli-
105 ance with the provisions of article three, chapter fifty-nine
106 of this code, and the publication area shall be the county
107 where such proceedings are had, and in the county where
108 the person to be served was last known to reside. In the
109 case of a person under disability, service shall be made on
110 the person and his personal representative, or if there be
111 none, on a guardian ad litem.

112 (3) In the case of service by publication or mail or
113 service on a personal representative or a guardian ad
114 litem, the person shall be allowed thirty days from the
115 date of the first publication or mailing of such service on
116 a personal representative or guardian ad litem in which to
117 appear and defend such parental rights.

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

120 (e) If the court finds that the person certified to parental
121 rights is guilty of the allegations set forth in the petition,
122 the court shall enter an order terminating his parental

123 rights and shall award the legal and physical custody and
124 control of said child to the petitioner.

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

Randy Shover
.....
Chairman Senate Committee

Nick Fontasio
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carol B. Smith
.....
Clerk of the Senate

Gregory D. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the *5th* day of *May*, 1997.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/97

Time 3:05 pm