

1 **Senate Bill No. 364**

2 (By Senator Yost)

3
4 [Introduced January 20, 2012; referred to the Committee on Health
5 and Human Resources; and then to the Committee on the Judiciary.]

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10 A BILL to amend and reenact §48-23-601 of the Code of West
11 Virginia, 1931, as amended; and to amend said code by adding
12 thereto a new section, designated §48-23-602, all relating to
13 compiling and making available nonidentifying social and
14 medical histories of birth parents prior to an adoption.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §48-23-601 the Code of West Virginia, 1931, as amended,
17 be amended and reenacted; that said code be amended by adding
18 thereto a new section, designated §48-23-602, all to read as
19 follows:

20 **ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.**

21 PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

22 **§48-23-601. Compilation of nonidentifying information on health
23 history and social and genetic history.**

24 (a) Prior to placement for adoption, the court shall require

1 that the licensed adoption agency or, where an agency is not
2 involved, the person, entity or organization handling the adoption,
3 shall compile and provide to the prospective adoptive parents a
4 detailed written health history and genetic and social history of
5 the child. These histories must exclude information that would
6 identify birth parents or members of a birth parent's family. The
7 histories must be set forth in a document that is separate from any
8 document containing such identifying information.

9 (b) The court, or an agency designated by the court, or judge
10 thereof, shall provide to an agency, person, or organization
11 handling the adoption the forms which must be utilized in the
12 acquisition of the above-described detailed nonidentifying written
13 health history and genetic and social history of the child. If the
14 records cannot be obtained, the court shall make specific findings
15 as to why the records are unobtainable.

16 (c) Records containing such nonidentifying information and
17 which are set forth on a document described in subsection (a)
18 above, separate from any document containing identifying data:

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

21 (2) Shall be available upon request, throughout the time
22 specified in subdivision (1) of this subsection together with any
23 additional nonidentifying information ~~which may have been added on~~
24 ~~health or on genetic and~~ provided pursuant to section six hundred

1 and two of this article, containing the medical and social history
2 of the birth parents, but which excludes information identifying
3 any birth parent or member of a birth parent's family, or the
4 adoptee or any adoptive parent of the adoptee, to the following
5 persons only:

6 (A) The adoptive parents of the child or, in the event of
7 death of the adoptive parents, the child's guardian;

8 (B) The adoptee upon reaching the age of eighteen;

9 (C) In the event of the death of the adoptee, the adoptee's
10 spouse if he or she is the legal parent of the adoptee's child or
11 the guardian of any child of the adoptee;

12 (D) In the event of the death of the adoptee, any progeny of
13 the adoptee who is age eighteen or older; and

14 (E) The birth parent of the adoptee.

15 (d) The person requesting nonidentifying health history and
16 genetic and social history shall pay the actual and reasonable
17 costs of providing that information. This provision requiring
18 payment of costs is subject to sections of this article that
19 provide for the adoptee to obtain information by petitioning the
20 court.

21 **§48-23-602. Taking social and medical histories of birth parents.**

22 (a) The Division of Human Services shall prescribe and supply
23 forms for the taking of social and medical histories of the birth
24 parents of minors available for adoption.

1 (b) The licensed adoption agency, or, where an agency is not
2 involved, the person, entity or organization handling the adoption
3 shall designate an assessor who shall record the social and medical
4 histories of the birth parents of a minor available for adoption,
5 unless the minor is to be adopted by the minor's stepparent or
6 grandparent. The assessor shall use the forms prescribed pursuant
7 to subsection (a) of this section. The assessor shall not include
8 on the forms identifying information about the birth parents or
9 other ancestors of the minor.

10 (c) A social history shall describe and identify the age;
11 ethnic, racial, religious, marital and physical characteristics;
12 and educational, cultural, talent and hobby, and work experience
13 background of the birth parents. A medical history shall identify
14 major diseases, malformations, allergies, ear or eye defects, major
15 conditions and major health problems of the birth parents that are
16 or may be congenital or familial. These histories may include
17 other social and medical information relative to the birth parents
18 and shall include social and medical information relative to the
19 minor's other ancestors.

20 The social and medical histories may be obtained through
21 interview with the birth parents or other persons and from any
22 available records if a birth parent or any legal guardian of a
23 birth parent consents to the release of information contained in a
24 record. An assessor who considers it necessary may request that a

1 birth parent undergo a medical examination. In obtaining social
2 and medical histories of a birth parent, an assessor shall inform
3 the birth parent, or person other than a birth parent who provides
4 information pursuant to this section, of the purpose and use of the
5 histories and of the birth parent's or other person's right to
6 correct or expand the histories at any time.

7 (d) A birth parent, or another person who provided information
8 in the preparation of the social and medical histories of the birth
9 parents of a minor, may cause the histories to be corrected or
10 expanded to include different or additional types of information.
11 The birth parent or other person may cause the histories to be
12 corrected or expanded at any time prior or subsequent to the
13 adoption of the minor, including any time after the minor becomes
14 an adult. A birth parent may cause the histories to be corrected or
15 expanded even if the birth parent did not provide any information
16 to the assessor at the time the histories were prepared.

17 (1) To cause the histories to be corrected or expanded, a
18 birth parent or other person who provided information shall provide
19 the information to be included or specify the information to be
20 corrected to whichever of the following is appropriate under the
21 circumstances:

22 (A) Subject to paragraph (B) of this subdivision, if the birth
23 parent or other person knows the assessor who prepared the
24 histories, to the assessor;

1 (B) If the birth parent or person does not know the assessor
2 or finds that the assessor has ceased to perform assessments, to
3 the court involved in the adoption or, if that court is not known,
4 to the Division of Human Services.

5 (2) An assessor who receives information from a birth parent
6 or other person pursuant to paragraph (B), subdivision (1) of this
7 section shall determine whether the information is of a type that
8 subsections (b) and (c) of this section permit to be included in
9 the histories. If the assessor determines the information is of a
10 permissible type, the assessor shall cause the histories to be
11 corrected or expanded to reflect the information. If, at the time
12 the information is received, the histories have been filed with the
13 court as required by subsection (e) of this section, the court
14 shall cooperate with the assessor in correcting or expanding the
15 histories.

16 (3) If the Division of Human Services or a court receives
17 information from a birth parent or other person pursuant to
18 paragraph (B), subdivision (1) of this section, it shall determine
19 whether the information is of a type that subsections (b) and (c)
20 of this section permit to be included in the histories. If a court
21 determines the information is of a permissible type, the court
22 shall cause the histories to be corrected or expanded to reflect
23 the information. If the Division of Human Services so determines,
24 the court involved shall cooperate with the division in the

1 correcting or expanding of the histories.

2 (4) An assessor or the Division of Human Services shall notify
3 a birth parent or other person in writing if the assessor or
4 division determines that information the birth parent or other
5 person provided or specified for inclusion in a history is not of
6 a type that may be included in a history. On receipt of the notice,
7 the birth parent or other person may petition the court involved in
8 the adoption to make a finding as to whether the information is of
9 a type that may be included in a history. On receipt of the
10 petition, the court shall issue its finding without holding a
11 hearing. If the court finds that the information is of a type that
12 may be included in a history, it shall cause the history to be
13 corrected or expanded to reflect the information.

14 (e) An assessor shall file the social and medical histories of
15 the birth parents prepared pursuant to subsections (b) and (c) of
16 this section with the court with which a petition to adopt the
17 birth parents' child is filed. The court promptly shall provide a
18 copy of the social and medical histories filed with it to the
19 petitioner. In a case involving the adoption of a minor by any
20 person other than the minor's stepparent or grandparent, a court
21 may refuse to issue an interlocutory order or final decree of
22 adoption if the histories of the birth parents have not been so
23 filed, unless the assessor certifies to the court that information
24 needed to prepare the histories is unavailable for reasons beyond

1 the assessor's control.

NOTE: The purpose of this bill is to facilitate compiling and making available nonidentifying social and medical histories of birth parents prior to an adoption.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§48-23-602 is new; therefore, strike-throughs and underscoring have been omitted.