

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2012



**E N R O L L E D**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 4130**

(By Delegates Smith, Lawrence and Hunt)



Passed March 8, 2012

To Take Effect Ninety Days From Passage

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

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That §48-22-803 of the Code of West Virginia, 1931, as amended, be repealed; that §48-22-303 of the code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-2-14h, all to read as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

1       (a) A consent or relinquishment as required by the  
2 provisions of section 22-301 must be written in plain English  
3 or, if the person executing the consent or relinquishment does  
4 not understand English, in the person's primary language.  
5 The form of the consent or relinquishment shall include the  
6 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 of  
17 legal and physical custody to, and the adoption of the child  
18 by, an adoptive parent or parents whose name or names may,  
19 but need not be, specified;

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

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

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

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

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

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

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

46       (13) That the person executing the consent or  
47 relinquishment 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 registry,  
51 pursuant to the provisions of article 23-101, et seq.;

- 52        (iii) Been advised of the availability of counseling;
- 53        (iv) Been advised of the consequences of misidentifying  
54        the other birth parent; and
- 55        (v) If a birth mother, been advised of the obligation to  
56        provide the information required by the provisions of section  
57        seven of this article in the case of an unknown father;
- 58        (14) That the person executing the consent or  
59        relinquishment has not received or been promised any money  
60        or anything of value for the consent or relinquishment, other  
61        than payments authorized by the provisions of section  
62        fourteen-h, article two, chapter sixty-one;
- 63        (15) Whether the child is an “Indian child” as defined in  
64        the Indian Child Welfare Act, 25 U.S.C. §1903;
- 65        (16) That the person believes the adoption of the child is  
66        in the child’s best interest; and
- 67        (17) That the person who is consenting or relinquishing  
68        expressly waives notice of any proceeding for adoption  
69        unless the adoption is contested, appealed or denied.
- 70        (b) A consent or relinquishment may provide explicitly  
71        for its conditional revocation if:
- 72        (1) Another person whose consent or relinquishment is  
73        required does not execute the same within a specified period;
- 74        (2) A court determines not to terminate another person’s  
75        parental relationship to the child; or
- 76        (3) In a direct placement for adoption, a petition for  
77        adoption by a prospective adoptive parent, named or  
78        described in the consent, is denied or withdrawn.

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

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

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

86 (3) Specific instructions on how to revoke the consent or  
87 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.**

1 (a) Any person or agency who knowingly offers, gives or  
2 agrees to give to another person money, property, service or  
3 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, adoption  
7 or placement, is guilty of a felony and subject to fine and  
8 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 to  
11 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  confined in the state correctional facility for not less than one  
19  year nor more than ten years or, in the discretion of the court,  
20  be confined in jail not more than one year and fined not less  
21  than \$2,000 nor more than \$10,000.

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

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

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

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

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

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

45 (f) At the final hearing on the adoption as provided in  
46 article twenty-two, chapter forty-eight of this code, an  
47 affidavit of any fees and expenses paid or promised by the  
48 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 \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

---

*Governor*