

Senate Bill No. 244

(By Senators Yost, Cookman and Fitzsimmons)

[Introduced January 8, 2014; referred to the Committee on the
Judiciary.]

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; and 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**

1 **history and social and genetic history.**

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

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

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

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

23 (2) Shall be available upon request, throughout the time

1 specified in subdivision (1) of this subsection together with any
2 additional nonidentifying information ~~which may have been added on~~
3 ~~health or on genetic and~~ provided pursuant to section six hundred
4 two of this article, containing the medical and social history of
5 the birth parents, but which excludes information identifying any
6 birth parent or member of a birth parent's family, or the adoptee
7 or any adoptive parent of the adoptee, to the following persons
8 only:

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

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

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

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

17 (E) The birth parent of the adoptee.

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

1 **§48-23-602. Taking social and medical histories of birth parents.**

2 (a) The Secretary of the Department of Health and Human
3 Resources shall prescribe and supply forms for the taking of social
4 and medical histories of the birth parents of minors available for
5 adoption.

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

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

1 minor's other ancestors.

2 The social and medical histories may be obtained through
3 interview with the birth parents or other persons and from any
4 available records if a birth parent or any legal guardian of a
5 birth parent consents to the release of information contained in a
6 record. A recorder who considers it necessary may request that a
7 birth parent undergo a medical examination. In obtaining social
8 and medical histories of a birth parent, a recorder shall inform
9 the birth parent, or person other than a birth parent who provides
10 information pursuant to this section, of the purpose and use of the
11 histories and of the birth parent's or other person's right to
12 correct or expand the histories at any time.

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

23 (1) To cause the histories to be corrected or expanded, a

1 birth parent or other person who provided information shall provide
2 the information to be included or specify the information to be
3 corrected to whichever of the following is appropriate under the
4 circumstances:

5 (A) Subject to paragraph (B) of this subdivision, if the birth
6 parent or other person knows the recorder who prepared the
7 histories, to the recorder;

8 (B) If the birth parent or person does not know the recorder
9 or finds that the recorder has ceased to record histories, to the
10 court involved in the adoption or, if that court is not known, to
11 the Department of Health and Human Resources.

12 (2) A recorder who receives information from a birth parent or
13 other person pursuant to paragraph (B), subdivision (1) of this
14 subsection shall determine whether the information is of a type
15 that subsections (b) and (c) of this section permit to be included
16 in the histories. If the recorder determines the information is of
17 a permissible type, the recorder shall cause the histories to be
18 corrected or expanded to reflect the information. If, at the time
19 the information is received, the histories have been filed with the
20 court as required by subsection (e) of this section, the court
21 shall cooperate with the recorder in correcting or expanding the
22 histories.

23 (3) If the Secretary of the Department of Health and Human

1 Resources or a court receives information from a birth parent or
2 other person pursuant to paragraph (B), subdivision (1) of this
3 subsection, it shall determine whether the information is of a type
4 that subsections (b) and (c) of this section permit to be included
5 in the histories. If a court determines the information is of a
6 permissible type, the court shall cause the histories to be
7 corrected or expanded to reflect the information. If the Secretary
8 of the Department of Health and Human Resources so determines, the
9 court involved shall cooperate with the secretary in the correcting
10 or expanding of the histories.

11 (4) A recorder or the Secretary of the Department of Health
12 and Human Resources shall notify a birth parent or other person in
13 writing if the recorder or department determines that information
14 the birth parent or other person provided or specified for
15 inclusion in a history is not of a type that may be included in a
16 history. On receipt of the notice, the birth parent or other person
17 may petition the court involved in the adoption to make a finding
18 as to whether the information is of a type that may be included in
19 a history. On receipt of the petition, the court shall issue its
20 finding without holding a hearing. If the court finds that the
21 information is of a type that may be included in a history, it
22 shall cause the history to be corrected or expanded to reflect the
23 information.

1 (e) A recorder shall file the social and medical histories of
2 the birth parents prepared pursuant to subsections (b) and (c) of
3 this section with the court with which a petition to adopt the
4 birth parents' child is filed. The court promptly shall provide a
5 copy of the social and medical histories filed with it to the
6 petitioner. In a case involving the adoption of a minor by any
7 person other than the minor's stepparent or grandparent, a court
8 may refuse to issue an interlocutory order or final decree of
9 adoption if the histories of the birth parents have not been so
10 filed, unless the recorder certifies to the court that information
11 needed to prepare the histories is unavailable for reasons beyond
12 the recorder'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.