

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 79

**FISCAL
NOTE**

BY SENATORS FERNS, STOLLINGS, AND CLINE

[Introduced January 10, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to repeal §48-23-101, §48-23-102, §48-23-201, §48-23-202, §48-23-203, §48-23-204,
 2 §48-23-205, §48-23-206, §48-23-207, §48-23-208, §48-23-209, §48-23-301, §48-23-401,
 3 §48-23-402, §48-23-403, §48-23-404, §48-23-501, §48-23-502, §48-23-503, §48-23-504,
 4 §48-23-505, §48-23-506, §48-23-507, §48-23-601, §48-23-701 and §48-23-801 of the
 5 Code of West Virginia, 1931, as amended; to amend and reenact §16-5-16 of said code;
 6 and to amend said code by adding thereto a new section, designated §48-22-705, all
 7 relating to access to adoption records; allowing adopted adults or lineal descendants to
 8 access adoption records; clarifying what is included in a certificate of adoption maintained
 9 by the State Registrar; defining terms; setting forth rights and responsibilities of biological
 10 parents; requiring biological parents to provide social and medical information for inclusion
 11 in an adoption file; setting forth duties of the State Registrar with respect to adoption files;
 12 providing for confidentiality of adoption files; providing for rule-making authority for
 13 Secretary of the Department of Health and Human Resources; setting forth an effective
 14 date; and repealing the voluntary adoption registry.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-16. Certificate of adoption.

1 (a) When a court of competent jurisdiction has entered an order of adoption in this state,
 2 it shall require the preparation of a certificate of adoption on a form prescribed and furnished by
 3 the state Registrar. The certificate of adoption shall be certified by the clerk of the court and shall
 4 provide:

5 (1) Facts necessary to locate and identify the certificate of birth of the person adopted or,
 6 in the case of a person who was born in a foreign country, evidence from sources determined to
 7 be reliable by the court as to the date and place of birth;

8 (2) Information necessary to establish a new certificate of birth of the person adopted; and

9 (3) Information sufficient to identify the order of adoption and name and other identifying
10 information of the biological parents of the person adopted for the purposes of an adoption file as
11 set forth in §48-22-7 of this code.

12 (b) Each petitioner shall furnish the information necessary to prepare the certificate of
13 adoption. The court may require any social service or welfare agency or any person having
14 knowledge of the facts to provide the additional information as may be necessary to complete the
15 certificate of adoption.

16 (c) Whenever an order of adoption is amended, vacated or annulled, the clerk of the court
17 shall prepare a report, which shall include the facts necessary to identify the original certificate of
18 adoption and the facts in the new order necessary to amend the birth record.

19 (d) Not later than the tenth day of each calendar month, the clerk of the court shall forward
20 to the State Registrar certificates of adoption and reports of annulments or amendments entered
21 in the preceding month, together with the related reports as the State Registrar shall require.

22 (e) When the State Registrar receives a certificate of adoption, report of annulment of
23 adoption, or amendment of an order of adoption for a person born in a state other than West
24 Virginia, he or she shall forward the certificate or report to the State Registrar in the state of birth.

25 (f) When the State Registrar receives a certificate of adoption, report of annulment of
26 adoption, or amendment of an order of adoption for a person born in a foreign country, and the
27 person was not a citizen of the United States at the time of birth, the State Registrar shall prepare
28 a "Certificate of Foreign Birth" as provided by §16-5-18(h) of this code. If the person was born in
29 Canada, the State Registrar shall send a copy of the certificate of adoption, report of annulment
30 of adoption, or amendment of an order of adoption to the registration authority in Canada.

31 (g) When the State Registrar receives a certificate of adoption, report of annulment of
32 adoption, or amendment of order of adoption for a person born in a foreign country who was a
33 citizen of the United States at the time of birth, the State Registrar may not prepare a "Certificate
34 of Foreign Birth" but shall notify the adoptive parents or the registrant of the procedures for

35 obtaining a revised certificate of birth through the United States Department of State.

36 (h) In addition to the information furnished in accordance with subsection (b) of this
 37 section, each person whose name is to appear on the certificate of adoption as a parent, whether
 38 as an adoptive parent or as a natural parent who joins in the adoption without relinquishing
 39 parental rights, shall furnish to the clerk of the circuit court the social security number or numbers
 40 issued to the parent. A record of the social security number or numbers shall be forwarded to the
 41 State Registrar along with the certificate of adoption, as provided in subsection (d) of this section.

CHAPTER 48. DOMESTIC RELATIONS

ARTICLE 22. ADOPTION.

§48-22-705. Access to adoption records.

1 (a) Definitions. As used in this section, the following words and phrases have the following
 2 meanings:

3 (1) "Adoption file" means a file maintained by the State Registrar which contains
 4 information about an adoption of an adult adoptee. An adoption file contains, at a minimum, all
 5 of the information required to be maintained by the State Registrar in a certificate of adoption as
 6 set forth in §16-5-16 of this code;

7 (2) "Adult adoptee" means a person who was adopted in the State of West Virginia as a
 8 minor but has since obtained the age of majority;

9 (3) "Biological parent" means the natural birth parents whose offspring, as a minor, was
 10 adopted;

11 (4) "Biological sibling" means the sibling or siblings of an adult adoptee with whom they
 12 share one or more biological parents;

13 (5) "Lineal descendant" means a direct line descendant of an adult adoptee. A lineal
 14 descendant includes a child, grandchild and great-grandchild. A lineal descendant does not
 15 include a collateral descendant which would include a brother, sister, aunt or uncle.

16 (6) "Medical history" means information regarding major diseases, malformations,
17 allergies, ear or eye defects, major condition and other major health problems of a biological
18 parent of an adult adoptee.

19 (7) "State Registrar" means the person appointed by the Commissioner of the Bureau for
20 Public Health to oversee the operation of the Section of Vital Statistics as set forth in §16-5-1 et
21 seq. of this code.

22 (8) "Secretary" means the Secretary of the Department of Health and Human Resources.

23 (9) "Social history" means the age, ethnic, racial, religious, marital, educational
24 background and physical characteristics of a biological parent of an adult adoptee.

25 (b) Access to Adoption Records. Access to adoption records shall be granted as follows:

26 (1) Notwithstanding any provision of this code to the contrary, any adult adoptee whose
27 adoption took place in the State of West Virginia may apply on a form prescribed by the secretary
28 in legislative rule to obtain a copy of his or her adoption file as that term is defined by this section.

29 (2) Notwithstanding any provision of this code to the contrary, any lineal descendant of an
30 adult adoptee whose adoption took place in the State of West Virginia may submit an application
31 on a form prescribed by the secretary in legislative rule to obtain a copy of the adoption file of an
32 adult adoptee to which they are the lineal descendant as set forth in this section.

33 (c) Biological parents.

34 (1) A biological parent as defined in this section may allow their identifying information and
35 contact information to be included with the adoption file which is disclosed to the adult adoptee or
36 lineal descendant. They may designate their preference for contact with the adult adoptee or lineal
37 descendant. This contact may be directly or through an intermediary designated by the biological
38 parent. A biological parent may also designate they do not wish to have any contact with the
39 adult adoptee or lineal descendant.

40 (2) A biological parent as defined in this section may request that his or her identifying
41 information and contact information be redacted from the adoption file provided to the adult

42 adoptee or a lineal descendant.

43 (3) At any time, a biological parent may rescind or modify his or her request that the
44 parent's identifying information or contact information be either disclosed or redacted. The
45 request to rescind or redact shall be on forms promulgated by the secretary pursuant to legislative
46 rule.

47 (4) Regardless of whether a biological parent requests identifying information and contact
48 information be redacted the biological parent shall provide a social and medical history to be
49 included in the adoption file. This information shall be released with the adoption file to the adult
50 adoptee or the lineal descendant.

51 (d) State Registrar.

52 (1) It is the responsibility of the State Registrar to maintain a confidential adoption file on
53 each person adopted in this state.

54 (2) The State Registrar shall prepare the adoption file as defined in subsection (a) of this
55 section and provide the same to the adult adoptee or a lineal descendant who completes an
56 application and who has complied with all of the requirements of this section and any rules
57 promulgated pursuant to this section.

58 (3) Upon receipt of an application from an adult adoptee or a lineal descendant to access
59 an adoption file, the State Registrar shall place the biological parents on notice and provide them
60 their responsibilities and options with respect to disclosure of their identifying information and
61 confidential information.

62 (e) Confidentiality of records.

63 (1) No person, agency, entity or organization of any kind, including, but not limited to, any
64 officer or employee of this state and any employee, officer or judge of any court of this state, may
65 disclose any confidential information relating to an adoption except as provided in this section or
66 pursuant to an order of a court of competent jurisdiction. Upon receipt of the information required
67 pursuant to §16-5-16 of this code, the State Registrar shall place the original birth certificate, the

68 certificate of adoption and any other items provided by the court in an adoption file. The contents
69 of the adoption file are not a public record and are subject to disclosure only pursuant to the
70 provisions of this section or by court order.

71 (2) Any employer who knowingly or negligently allows any employee to disclose
72 information in violation of this article is subject to the penalties set forth in subdivision (3) of this
73 subsection, together with the employee who made any disclosure prohibited by this section.

74 (3) Any person, agency, entity or organization of any kind who discloses information in
75 violation of this law is liable to the parties so injured in an action to recover damages.

76 (4) Notwithstanding any provision of this code to the contrary, the information contained
77 in an adoption file as defined by this section may not be disclosed under any sunshine or freedom
78 of information law, rule or practice.

79 (5) Notwithstanding any provision of this code to the contrary, no person, group of persons,
80 or entity, including an entity, agency, department, division or bureau of this state, may file a class
81 action to force the disclosure of any information contained in an adoption file.

82 (f) *Rule-making authority.* The secretary shall propose rules for legislative approval in
83 accordance with the provisions of §29A-3-1 *et seq.* of this code. These rules shall include at a
84 minimum:

85 (1) Development of informational and educational materials for adopted adults and
86 biological parents about their rights and responsibilities under the provisions of this section;

87 (2) Necessary forms including, but not limited to:

88 (A) An application for an adoption file by an adopted adult or a lineal descendant;

89 (B) An authorization for release of an adopted name of an adult adoptee to his or her
90 biological parents or biological siblings;

91 (C) A rescission of authorization to release an adopted name of an adult adoptee;

92 (D) A contact preference form for biological parents or biological siblings;

93 (E) A social and medical history form for use by biological parents; and

- 94 (F) An application for release of an adopted name.
- 95 (3) A detailed procedure for an application and receipt of an adoption file, including
- 96 timeframes for notification of biological parents and providing the adoption file to the applicant;
- 97 (4) A fee for the application for receipt of an adoption file which may not exceed \$25; and
- 98 (5) Any other provisions necessary to effectuate the provisions of this section.

PART 1. GENERAL PROVISIONS.

§48-23-101. Policy regarding persons obtaining identifying information after adoption.

1 [Repealed.]

§48-23-102. Legislative purpose.

1 [Repealed.]

PART 2. DEFINITIONS

§48-23-201. Applicability of definitions.

1 [Repealed.]

§48-23-202. Adoptee defined.

1 [Repealed.]

§48-23-203. Adoption defined.

1 [Repealed.]

§48-23-204. Adult defined.

1 [Repealed.]

§48-23-205. Agency defined.

1 [Repealed.]

§48-23-206. Genetic and social history defined.

1 [Repealed.]

§48-23-207. Health history defined.

1 [Repealed.]

§48-23-208. Mutual consent voluntary adoption registry or registry defined.

1 [Repealed.]

§48-23-209. Putative father defined.

1 [Repealed.]

PART 3. ESTABLISHMENT AND MAINTENANCE
OF VOLUNTARY ADOPTION REGISTRY.

§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.

1 [Repealed.]

PART 4. USE OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.

1 [Repealed.]

§48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.

1 [Repealed.]

§48-23-403. Registration by a birth father.

1 [Repealed.]

§48-23-404. Registration by a birth parent who used an alias in terminating parental rights.

1 [Repealed.]

PART 5. OPERATION OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-501. Prerequisites to disclosure of identifying information.

1 [Repealed.]

§48-23-502. Counseling of registrants.

1 [Repealed.]

§48-23-503. Cases where disclosure of identifying information cannot occur.

1 [Repealed.]

§48-23-504. Matching and disclosure procedures.

1 [Repealed.]

§48-23-505. Retention of data by the registry.

1 [Repealed.]

§48-23-506. Scope of information obtained by the mutual consent voluntary adoption registry.

1 [Repealed.]

§48-23-507. Fees for operations of the mutual consent voluntary adoption registry.

1 [Repealed.]

PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

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

1 [Repealed.]

PART 7. PROHIBITED CONDUCT.

§48-23-701. Prohibited conduct.

1 [Repealed.]

PART 8. NONDISCLOSURE OF REGISTRY INFORMATION.

§48-23-801. Nondisclosure.

1 [Repealed.]

NOTE: The purpose of this bill is to allow adult adoptees and their lineal descendants to access adoption records regarding the biological parents and to repeal the voluntary adoption registry.

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