

1 **H. B. 3217**

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3 (By Delegates C. Miller and Sobonya)
4 [Introduced February 21, 2011; referred to the
5 Committee on the Judiciary.]
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10 A BILL to amend and reenact §48-22-704 of the Code of West
11 Virginia, 1931, as amended, relating to adoptions; and
12 providing that an order of adoption may be dissented to at any
13 time after entry by a person who was a minor at the time of
14 the adoption.

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

16 That §48-22-704 of the Code of West Virginia, 1931, as
17 amended, be amended and reenacted to read as follows:

18 **ARTICLE 22. ADOPTION.**

19 **§48-22-704. Finality of order; challenges to order of adoption.**

20 (a) An order or decree of adoption is a final order for
21 purposes of appeal to the Supreme Court of Appeals on the date when
22 the order is entered. An order or decree of adoption for any other
23 purpose is final upon the expiration of the time for filing an
24 appeal when no appeal is filed or when an appeal is not timely

1 filed, or upon the date of the denial or dismissal of any appeal
2 which has been timely filed.

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

6 (c) If a challenge is brought within the six-month period by
7 an individual who did not receive proper notice of the proceedings
8 pursuant to the provisions of this article, the court shall deny
9 the challenge, unless the individual proves by clear and convincing
10 evidence that the decree or order is not in the best interest of
11 the child.

12 (d) A decree or order entered under this article may not be
13 vacated or set aside upon application of a person who waived
14 notice, or who was properly served with notice pursuant to this
15 article and failed to respond or appear, file an answer or file a
16 claim of paternity within the time allowed.

17 (e) A decree or order entered under this article may not be
18 vacated or set aside upon application of a person alleging there is
19 a failure to comply with an agreement for visitation or
20 communication with the adopted child: *Provided*, That the court may
21 hear a petition to enforce the agreement, in which case the court
22 shall determine whether enforcement of the agreement would serve
23 the best interests of the child. The court may, in its sole
24 discretion, consider the position of a child of the age and

1 maturity to express such position to the court.

2 (f) The Supreme Court of Appeals shall consider and issue
3 rulings on any petition for appeal from an order or decree of
4 adoption and petitions for appeal from any other order entered
5 pursuant to the provisions of this article as expeditiously as
6 possible. The circuit court shall consider and issue rulings on
7 any petition filed to vacate an order or decree of adoption and any
8 other pleadings or petitions filed in connection with any adoption
9 proceeding as expeditiously as possible.

10 (g) When any minor has been adopted, he or she may, ~~within one~~
11 ~~year~~ at any time after becoming of age, sign, seal and acknowledge
12 before proper authority, in the county in which the order of
13 adoption was made, a dissent from such adoption, and file such
14 instrument of dissent in the office of the clerk of the circuit
15 court which granted said adoption. The clerk of the county
16 commission of such county and the circuit clerk shall record and
17 index the same. The adoption shall be vacated upon the filing of
18 such instrument of dissent.

NOTE: The purpose of this bill is to allow an adoptee who was a minor at the time of entry of an order of adoption to dissent at any time after the adoption. Current law permits a dissent within one year after that person "becomes of age".

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