

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4130**

4 (By Delegates Smith, Lawrence and Hunt)

5  
6 (Originating in the Committee on Finance)

7 [February 23, 2012]

8  
9  
10 A BILL to repeal §48-22-803 of the Code of West Virginia, 1931, as  
11 amended; to amend and reenact §48-22-303 of said code; and to  
12 amend and reenact said code by adding thereto a new section,  
13 designated §61-2-14h, all relating to crimes against the  
14 person; increasing criminal penalties relating to the increase  
15 the penalty for the criminal offenses involving money in  
16 exchange for locating, providing or procuring a minor child in  
17 certain circumstances; providing circumstances deemed abuse  
18 and neglect; and providing exceptions from thereto for certain  
19 acts relating to lawful adoptions.

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

21 That §48-22-803 of the Code of West Virginia, 1931, as  
22 amended, be repealed; that §48-22-303 of the code be amended and  
23 reenacted; and that said code be amended by adding thereto a new  
24 section, designated §61-2-14h, all to read as follows:

25 **CHAPTER 48. DOMESTIC RELATIONS.**

1 **ARTICLE 22. ADOPTION.**

2 **§48-22-303. Content of consent or relinquishment.**

3 (a) A consent or relinquishment as required by the provisions  
4 of section 22-301 must be written in plain English or, if the  
5 person executing the consent or relinquishment does not understand  
6 English, in the person's primary language. The form of the consent  
7 or relinquishment shall include the following, as appropriate:

8 (1) The date, place and time of the execution of the consent  
9 or relinquishment;

10 (2) The name, date of birth and current mailing address of the  
11 person executing the consent or relinquishment;

12 (3) The date, place of birth and the name or pseudonym ("Baby  
13 Boy \_\_\_\_\_ or Baby Girl \_\_\_\_\_") of the minor child;

14 (4) The fact that the document is being executed more than  
15 seventy-two hours after the birth of the child;

16 (5) If a consent, that the person executing the document is  
17 voluntarily and unequivocally consenting to the transfer of legal  
18 and physical custody to, and the adoption of the child by, an  
19 adoptive parent or parents whose name or names may, but need not  
20 be, specified;

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

25 (7) If a consent, that it authorizes the prospective adoptive  
26 parents, or if a relinquishment, that it authorizes the agency, to

1 consent to medical treatment of the child pending any adoption  
2 proceeding;

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

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

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

12 (11) That the termination of parental rights and obligations  
13 is permanent whether or not any agreement for visitation or  
14 communication with the child is subsequently performed;

15 (12) That the person executing the consent or relinquishment  
16 does so of his or her own free will and the consent or  
17 relinquishment has not been obtained by fraud or duress;

18 (13) That the person executing the consent or relinquishment  
19 has:

20 (i) Received a copy of the consent or relinquishment;

21 (ii) Been provided the information and afforded the  
22 opportunity to participate in the voluntary adoption registry,  
23 pursuant to the provisions of article 23-101, et seq.;

24 (iii) Been advised of the availability of counseling;

25 (iv) Been advised of the consequences of misidentifying the  
26 other birth parent; and

1 (v) If a birth mother, been advised of the obligation to  
2 provide the information required by the provisions of section seven  
3 of this article in the case of an unknown father;

4 (14) That the person executing the consent or relinquishment  
5 has not received or been promised any money or anything of value  
6 for the consent or relinquishment, other than payments authorized  
7 by the provisions of section ~~22-803~~ fourteen-h, article two,  
8 chapter sixty-one;

9 (15) Whether the child is an "Indian child" as defined in the  
10 Indian Child Welfare Act, 25 U.S.C. §1903;

11 (16) That the person believes the adoption of the child is in  
12 the child's best interest; and

13 (17) That the person who is consenting or relinquishing  
14 expressly waives notice of any proceeding for adoption unless the  
15 adoption is contested, appealed or denied.

16 (b) A consent or relinquishment may provide explicitly for its  
17 conditional revocation if:

18 (1) Another person whose consent or relinquishment is required  
19 does not execute the same within a specified period;

20 (2) A court determines not to terminate another person's  
21 parental relationship to the child; or

22 (3) In a direct placement for adoption, a petition for  
23 adoption by a prospective adoptive parent, named or described in  
24 the consent, is denied or withdrawn.

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

26 (1) If a consent, the name, address, telephone and facsimile

1 numbers of the lawyer representing the prospective adoptive  
2 parents; or

3 (2) If a relinquishment, the name, address, telephone and  
4 facsimile numbers of the agency to which the child is being  
5 relinquished; and

6 (3) Specific instructions on how to revoke the consent or  
7 relinquishment.

8 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

9 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

10 **§61-2-14h. Prohibition of purchase or sale of child; penalty;**  
11 **definitions; exceptions.**

12 (a) Any person or agency who knowingly offers, gives or agrees  
13 to give to another person money, property, service or other thing  
14 of value in consideration for the recipient's locating, providing  
15 or procuring a minor child for any purpose which entails a transfer  
16 of the legal or physical custody of said child, including, but not  
17 limited to, adoption or placement, is guilty of a felony and  
18 subject to fine and imprisonment as provided herein.

19 (b) Any person who knowingly receives, accepts or offers to  
20 accept money, property, service or other thing of value to locate,  
21 provide or procure a minor child for any purpose which entails a  
22 transfer of the legal or physical custody of said child, including,  
23 but not limited to, adoption or placement, is guilty of a felony  
24 and subject to fine and imprisonment as provided herein.

25 (c) Any person who violates the provisions of this section is

1 guilty of a felony and, upon conviction thereof, may be confined in  
2 the state correctional facility for not less than one year nor more  
3 than ten years or, in the discretion of the court, be confined in  
4 jail not more than one year and fined not less than \$2,000 nor more  
5 than \$10,000.

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

13 (e) This section does not prohibit the payment or receipt of  
14 the following:

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

18 (2) Reasonable and customary legal, medical, hospital or other  
19 expenses incurred in connection with the pregnancy, birth and  
20 adoption proceedings.

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

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

26 (f) At the final hearing on the adoption as provided in

1 article twenty-two, chapter forty-eight of this code, an affidavit  
2 of any fees and expenses paid or promised by the adoptive parents  
3 shall be submitted to the court.