

COMMITTEE SUBSTITUTE

FOR

H. B. 4130

(BY DELEGATES SMITH, LAWRENCE AND HUNT)

(Originating in the Committee on Finance)
[February 23, 2012]

A BILL 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That §48-22-803 of the Code of West Virginia, 1931, as amended, be repealed; that §48-22-303 of the code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §61-2-14h, all to read as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 relinquishment
43 does so of his or her own free will and the consent or
44 relinquishment has not been obtained by fraud or duress;

45 (13) That the person executing the consent or
46 relinquishment has:

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

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

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

52 (iv) Been advised of the consequences of misidentifying
53 the other birth parent; and

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

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

62 (15) Whether the child is an “Indian child” as defined in
63 the Indian Child Welfare Act, 25 U.S.C. §1903;

64 (16) That the person believes the adoption of the child is
65 in the child’s best interest; and

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

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

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

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

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77 described in the consent, is denied or withdrawn.

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

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

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

85 (3) Specific instructions on how to revoke the consent or
86 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 provided
33 by the department of health and human resources or any licensed
34 or duly authorized adoption or child-placing agency.

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

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

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

44 (f) At the final hearing on the adoption as provided in
45 article twenty-two, chapter forty-eight of this code, an
46 affidavit of any fees and expenses paid or promised by the
47 adoptive parents shall be submitted to the court.