

**Senate Bill No. 78**

(By Senator Yost)

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[Introduced January 14, 2015; referred to the Committee on the Judiciary.]

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9 A BILL to amend and reenact §48-23-601 of the Code of West Virginia, 1931, as amended; and to  
10 amend said code by adding thereto a new section, designated §48-23-602, all relating to  
11 compiling and making available nonidentifying social and medical histories of birth parents  
12 prior to an adoption.

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

14 That §48-23-601 of the Code of West Virginia, 1931, as amended, be amended and  
15 reenacted; and that said code be amended by adding thereto a new section, designated §48-23-602,  
16 all to read as follows:

17 **ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.**

18 **PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.**

19 **§48-23-601. Compilation of nonidentifying information on health history and social and**  
20 **genetic history.**

21 (a) Prior to placement for adoption, the court shall require that the licensed adoption agency

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

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

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

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

15 (2) Shall be available upon request, throughout the time specified in subdivision (1) of this  
16 subsection together with any additional nonidentifying information ~~which may have been added on~~  
17 ~~health or on genetic and~~ provided pursuant to section six hundred two of this article, containing the  
18 medical and social history of the birth parents, but which excludes information identifying any birth  
19 parent or member of a birth parent's family, or the adoptee or any adoptive parent of the adoptee,  
20 to the following persons only:

21 (A) The adoptive parents of the child or, in the event of death of the adoptive parents, the

1 child's guardian;

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

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

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

7 (E) The birth parent of the adoptee.

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

12 **§48-23-602. Taking social and medical histories of birth parents.**

13 (a) The Secretary of the Department of Health and Human Resources shall prescribe and  
14 supply forms for the taking of social and medical histories of the birth parents of minors available  
15 for adoption.

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

1 (c) A social history shall describe and identify the age; ethnic, racial, religious, marital and  
2 physical characteristics; and educational, cultural, talent and hobby, and work experience background  
3 of the birth parents. A medical history shall identify major diseases, malformations, allergies, ear  
4 or eye defects, major conditions and major health problems of the birth parents that are or may be  
5 congenital or familial. These histories may include other social and medical information relative to  
6 the birth parents and shall include social and medical information relative to the minor's other  
7 ancestors.

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

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

1           (1) To cause the histories to be corrected or expanded, a birth parent or other person who  
2 provided information shall provide the information to be included or specify the information to be  
3 corrected to whichever of the following is appropriate under the circumstances:

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

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

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

16           (3) If the Secretary of the Department of Health and Human Resources or a court receives  
17 information from a birth parent or other person pursuant to paragraph (B), subdivision (1) of this  
18 subsection, it shall determine whether the information is of a type that subsections (b) and (c) of this  
19 section permit to be included in the histories. If a court determines the information is of a  
20 permissible type, the court shall cause the histories to be corrected or expanded to reflect the  
21 information. If the Secretary of the Department of Health and Human Resources so determines, the

1 court involved shall cooperate with the secretary in the correcting or expanding of the histories.

2 (4) A recorder or the Secretary of the Department of Health and Human Resources shall  
3 notify a birth parent or other person in writing if the recorder or department determines that  
4 information the birth parent or other person provided or specified for inclusion in a history is not of  
5 a type that may be included in a history. On receipt of the notice, the birth parent or other person  
6 may petition the court involved in the adoption to make a finding as to whether the information is  
7 of a type that may be included in a history. On receipt of the petition, the court shall issue its finding  
8 without holding a hearing. If the court finds that the information is of a type that may be included  
9 in a history, it shall cause the history to be corrected or expanded to reflect the information.

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