

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 285

BY SENATOR FERNS

[Introduced January 14, 2016; Referred
to the Committee on Health and Human Resources; and
then 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:

1 That §48-23-101, §48-23-102, §48-23-201, §48-23-202, §48-23-203, §48-23-204, §48-
 2 23-205, §48-23-206, §48-23-207, §48-23-208, §48-23-209, §48-23-301, §48-23-401, §48-23-
 3 402, §48-23-403, §48-23-404, §48-23-501, §48-23-502, §48-23-503, §48-23-504, §48-23-505,
 4 §48-23-506, §48-23-507, §48-23-601, §48-23-701 and §48-23-801 of the Code of West Virginia,
 5 1931, as amended, be repealed; that §16-5-16 of said code be amended and reenacted; and that
 6 said code be amended by adding thereto a new section, designated §48-22-705, all to read as
 7 follows:

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 section seven hundred five, article twenty-two, chapter forty-eight 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 subsection (h), section eighteen of this article. If the
29 person was born in Canada, the State Registrar shall send a copy of the certificate of adoption,
30 report of annulment of adoption, or amendment of an order of adoption to the registration authority
31 in Canada.

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

37 (h) In addition to the information furnished in accordance with subsection (b) of this
38 section, each person whose name is to appear on the certificate of adoption as a parent, whether
39 as an adoptive parent or as a natural parent who joins in the adoption without relinquishing
40 parental rights, shall furnish to the clerk of the circuit court the social security number or numbers
41 issued to the parent. A record of the social security number or numbers shall be forwarded to the
42 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 section sixteen, article five, chapter sixteen 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 article five,
21 chapter sixteen 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 submit an application on a form prescribed
28 by the Secretary in legislative rule to obtain a copy of their adoption file as that term is defined by
29 this section.

30 (2) Notwithstanding any provision of this code to the contrary, any lineal descendant of an
31 adult adoptee whose adoption took place in the State of West Virginia may submit an application

32 on a form prescribed by the secretary in legislative rule to obtain a copy of the adoption file of an
33 adult adoptee to which they are the lineal descendant as set forth in this section.

34 (c) *Biological parents.*

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

41 (2) A biological parent as defined in this section may request that their identifying
42 information and contact information be redacted from the adoption file provided to the adult
43 adoptee or a lineal descendant.

44 (3) At any time a biological parent may rescind or modify their request that their identifying
45 information or contact information be either disclosed or redacted. Any such request shall be on
46 forms promulgated by the Secretary pursuant to legislative rule.

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

51 (d) *State Registrar.*

52 (1) It is the responsibility of the State Registrar to maintain 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 section sixteen, article five, chapter sixteen of this code, the State Registrar shall
68 place the original birth certificate, the certificate of adoption and any other items provided by the
69 court in an adoption file. The contents of the adoption file are not a public record and are only
70 subject to disclosure pursuant to the 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 or person,
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) Rulemaking authority. The Secretary shall propose rules for legislative approval in
83 accordance with the provisions of article three, chapter twenty-nine-a of this code. These rules
84 shall include at a 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.

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.