

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 80

BY SENATOR YOST

[Introduced January 13, 2016;

Referred to the Committee on Health and Human

Resources; and then to the Committee on the

Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That §48-23-601 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that said code be amended by adding thereto a new section, designated §48-23-
3 602, all to read as follows:

ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.

PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

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

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

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

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

14 data:

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

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

22 (A) The adoptive parents of the child or, in the event of death of the adoptive parents, the
23 child's guardian;

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

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

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

29 (E) The birth parent of the adoptee.

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

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

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

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

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

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

25 (d) A birth parent, or another person who provided information in the preparation of the
26 social and medical histories of the birth parents of a minor, may cause the histories to be corrected
27 or expanded to include different or additional types of information. The birth parent or other

28 person may cause the histories to be corrected or expanded at any time prior or subsequent to
29 the adoption of the minor, including any time after the minor becomes an adult. A birth parent may
30 cause the histories to be corrected or expanded even if the birth parent did not provide any
31 information to the recorder at the time the histories were prepared.

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

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

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

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

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

52 information. If the Secretary of the Department of Health and Human Resources so determines,
53 the court involved shall cooperate with the secretary in the correcting or expanding of the histories.

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

63 (e) A recorder shall file the social and medical histories of the birth parents prepared
64 pursuant to subsections (b) and (c) of this section with the court with which a petition to adopt the
65 birth parents' child is filed. The court promptly shall provide a copy of the social and medical
66 histories filed with it to the petitioner. In a case involving the adoption of a minor by any person
67 other than the minor's stepparent or grandparent, a court may refuse to issue an interlocutory
68 order or final decree of adoption if the histories of the birth parents have not been so filed, unless
69 the recorder certifies to the court that information needed to prepare the histories is unavailable
70 for reasons 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 a heading or the present law and underscoring indicates new language that would be added.

§48-23-602 is new; therefore, it is completely underscored.