

ACT 194

H.B. NO. 2928-76

A Bill for an Act Relating to Adoption of Adults.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 578, Hawaii Revised Statutes, is amended as follows:

1. By amending section 578-1 to read as follows:

“Sec. 578-1 Who may adopt; jurisdiction; venue. Any proper adult person, not married, or any person married to the legal father or mother of a minor child, or a husband and wife jointly, may petition the family court of the circuit in which he or they reside or are in military service or the family court of the circuit in which the individual to be adopted resides or was born or in which a child placing organization approved by the department under the provisions of section 346-17 having legal custody (as defined in section 572-2(11)) of the child is located, for leave to adopt an individual toward whom he or they do not sustain the legal relationship of parent and child and for a change of the name of the individual. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the family court.”

2. By amending section 578-2 as follows:

“Sec. 578-2 Consent to adoption. (a) Persons required to consent to adoption. Unless consent is not required or is dispensed with under subsection (c) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:

- (1) The mother of the child;
- (2) A legal father as to whom the child is a legitimate child;
- (3) An adjudicated father whose relationship to the child has been determined by a court;
- (4) A presumed father under section 578-2(d);
- (5) A concerned natural father who is not the legal, adjudicated, or

presumed father but who has demonstrated a reasonable degree of interest, concern or responsibility as to the welfare of a child, either:

- (A) During the first thirty days after such child's birth; or
 - (B) Prior to the execution of a valid consent by the mother of the child; or
 - (C) Prior to the placement of the child with adoptive parents; whichever period of time is greater;
- (6) Any person or agency having legal custody of the child or legally empowered to consent;
 - (7) The court having jurisdiction of the custody of the child, if the legal guardian or legal custodian of the person of the child is not empowered to consent to adoption;
 - (8) The child to be adopted if more than ten years of age, unless the court in the best interest of the child dispenses with the child's consent.
- (b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse, if the adult is married, and if the adult to be adopted is an adult niece, nephew, or stepchild of the adopting parents.
- (c) Persons as to whom consent not required or whose consent may be dispensed with by order of the court.
- (1) Persons as to whom consent not required:
 - (A) A parent who has deserted a child without affording means of identification for a period of ninety days or who has voluntarily surrendered the care and custody of the child to another for a period of two years;
 - (B) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so, or for a period of at least one year has failed to provide for care and support of the child when able to do so;
 - (C) A natural father who was not married to the child's mother at the time of the child's conception or birth and who does not fall within the provisions of subsection (a) (3) or (4) or (5) and who is found by the court to have failed to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of a child either (i) during the first thirty days after such child's birth, or (ii) prior to the execution of a valid consent by the mother of the child, or (iii) prior to the placement of the child with adoptive parents, whichever period of time is greater.
 - (D) A parent whose parental rights have been judicially terminated under chapter 572, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take such action;
 - (E) A parent judicially declared mentally incompetent or mentally retarded if the court dispenses with such parent's consent;
 - (F) Any legal guardian or legal custodian of the child sought to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after

examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably;

- (G) Any parent of the individual to be adopted, if the individual is an adult eligible for adoption under subsection (b).

- (2) Persons whose consent may be dispensed with by order of the court.

The court may dispense with the consent of a parent who comes within subsection (a) (3) or (4) or (5) herein, upon finding that:

- (A) The petitioner is the stepfather of the child and the child has not lived with the adjudicated, presumed, or concerned father for a substantial period of time; or
 (B) The adjudicated, presumed, or concerned father has not filed a petition to adopt such child; or
 (C) The adjudicated, presumed, or concerned father is not a fit and proper person who is financially and otherwise able to give the child a proper home and education.

- (d) Presumption of paternity. A man is presumed to be the natural father of a child if:

- (1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
- (2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
- (A) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or
 (B) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
- (3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; and
- (A) He has acknowledged his paternity of the child in writing filed with the department of health;
 (B) With his consent he is named as the child's father on the child's birth certificate; or
 (C) He is obligated to support the child under a written voluntary promise or by court order;
- (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or
- (5) He acknowledges his paternity of the child in writing filed with the department of health, which shall promptly inform the mother of the

filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. If the acknowledgment is filed and not disputed by the mother and if another man is not presumed under this section to be the child's father, the department of health shall prepare a new certificate of birth in accordance with chapter 338.

(e) Notice of hearing; minor parent; consent authorizing selection of adoptive parents. No hearing of a petition for adoption shall be had unless each of the living parents of the child who falls within the provisions of subsection (a) and who has not consented to the proposed adoption, but who is alleged to come within the provisions of subsection (c) (1) (A) or (c) (1) (B) or (c) (2) of this section, shall have had due notice, actual or constructive, of the allegations of the petition and of the time and place of the hearing thereof. Such notice need not be given to any parent whose parental rights have been legally terminated as hereinabove provided or whose consent has been filed with the petition.

The minority of a child's parent shall not be a bar to the right of such parent to execute a valid and binding consent to the adoption of such child.

Any parental consent required hereunder shall be valid and binding even though it does not designate any specific adoptive parent or parents, if it clearly authorizes the department of social services and housing, or a child placing organization approved by the department under the provisions of section 346-17 or some proper person not forbidden by law to place a child for adoption, to select and approve an adoptive parent or parents for the child.

(f) Withdrawal of consent. A consent to adoption which has been filed or received in evidence in an adoption proceeding or which has been given to the department of social services and housing or to a child placing organization approved by the department under section 346-17, or to any other proper person not forbidden by law to place or receive an individual for adoption, may not be withdrawn or repudiated after the individual has been placed for adoption, without the express approval of the court based upon a written finding that such action will be for the best interests of the individual to be adopted.

(g) Maintenance of action based on medical or surgical treatment of child barred when. A person who consents to adoption, or on whose behalf a consent to adoption is signed, and a nonconsenting parent whose consent is not required or is dispensed with hereunder shall be barred from maintaining any action based upon medical or surgical care or treatment given to the child with the permission of the petitioner or petitioners or the person or agency authorized by the parental consent to select and approve an adoptive parent or parents; provided that nothing herein contained shall be construed to alienate or impair any cause of action accruing to the child for personal injury which may be sustained as a result of such medical or surgical care or treatment."

3. By amending section 578-8 to read as follows:

"Sec. 578-8 Hearing; investigation; decree. No decree of adoption shall be entered unless a hearing has been held at which the petitioner or petitioners, and

any legal parent married to a petitioner, and any individual whose consent is required, have personally appeared before the court, unless expressly excused by the court. After considering the petition and such evidence as the petitioners and any other properly interested person may wish to present, the court may enter a decree of adoption if it is satisfied (1) that the individual is adoptable under sections 578-1 and 578-2, (2) that the individual is physically, mentally, and otherwise suitable for adoption by the petitioners, (3) that the petitioners are fit and proper persons and financially able to give the individual a proper home and education, if the individual is a child, and (4) that the adoption will be for the best interests of the individual, which decree shall take effect upon such date as may be fixed therein by the court, such date to be not earlier than the date of the filing of the petition and not later than six months after the date of the entry of the decree.

Before entering the decree, the court shall notify the director of social services or the nearest county administrator of the department of social services and housing of the pendency of such petition for adoption and allow a reasonable time for the director or such county administrator to make such investigation as he may deem proper as to the fitness of the petitioners to adopt the individual, and as to whether the best interests of the individual will be subserved by the adoption; provided, that the court may, if it finds that the best interests of the individual to be adopted so require, by written order waive the requirement for notification and investigation above set forth, and enter its decree solely on the basis of the evidence adduced at the hearing. The director shall have the right to intervene in any adoption proceeding for the purpose of protecting the interests of the individual to be adopted or of any legal parent of the individual, and shall have the same rights of appeal as any party to the proceeding. The attorney general, upon the request of the director, shall represent the director in any such proceeding. The director, when notified as above set forth, or when he has intervened without notification, shall make a report to the court within the time required, reporting the facts disclosed and his recommendation; provided, that the director, if he determines that the best interests of the individual to be adopted will be served thereby, may refer any such notification to a child placing organization approved by the department under section 346-17, and the report and recommendation of such organization, when forwarded by the director, shall be considered by the court in lieu of a report and recommendation by the director. If the court determines that any such report discloses facts adverse to the petitioners or indicates that the best interests of the individual to be adopted will not be subserved by the proposed adoption, it shall thereupon give notice of the determination to the petitioners and afford them a reasonable opportunity to rebut the report."

4. By amending section 578-9 to read as follows:

"Sec. 578-9 Custody of minor child after decree and before adoption. The decree may provide that, during the period, if any, between the entry thereof and the effective date of adoption, the care, custody, and control of a minor child be given to the petitioner or petitioners, who, in such event, shall be liable during such period for the care, maintenance, and support of the minor child and for its torts in the same manner as legal parents, and may further provide for the supervision and visitation of the minor child by the director of social services or

his agent during such period and for such reports in connection therewith as the court may require.”

5. By amending section 578-10 to read as follows:

“Sec. 578-10 Disposition of minor child on discontinuance, withdrawal or denial of petition. Upon the discontinuance or withdrawal or denial of any petition for adoption, the court may make appropriate temporary orders concerning the care, custody, and control of a minor child involved and may refer the minor child to the department of social services and housing or to another appropriate agency or officer for action as in the case of a minor subject to section 571-11(1).”

6. By amending section 578-11 to read as follows:

“Sec. 578-11 Disposition in case of death of petitioners. Notwithstanding the death of a petitioner or the petitioners during the pendency of the petition, the court, if it finds that the best interests of the individual to be adopted will be served thereby, and, in the case of a surviving petitioner, that such petitioner so desires, may enter a decree of adoption as prayed for in the petition, effective as of the date of the filing of the petition.”

7. By amending section 578-13 to read as follows:

“Sec. 578-13 Change of name. The family name of an adoptive minor child shall be changed to that of the adoptive parent or parents and the given name of the minor child may be fixed or changed at the same time. The family name of an adoptive individual who is an adult at the time of the filing of the petition for adoption may be changed to that of the adoptive parent or parents and the given name of the adult may be fixed or changed at the same time.”

8. By amending section 578-14 to read as follows:

“Sec. 578-14 Record of adoption. A certified copy of the decree of adoption, or a certified abstract thereof on a form approved by the department of health shall, after such decree has become effective, be sent to the department. The department shall cause to be made a new record of the birth in the name of the individual, as fixed or changed by the decree, with the names of the adoptive parents, and shall then cause to be sealed and filed the original birth certificate of the individual with the decree or the abstract thereof, and such sealed package shall be opened only by order of a court of record. If the birth of the individual occurred outside of the State, and a record of such birth exists, the certified copy of the decree or the abstract thereof, shall be transmitted by the department of health to the birth registration authorities of the place of the individual’s birth with a request that such authorities take appropriate action with respect to the record of individual’s birth. If the birth of the individual occurred outside of the State, or if the birth of an individual born in the State has not been registered with the department of health, or if other good cause exists, the clerk of the court shall, upon request, and with the approval of the family court, upon the finding of the court that such action is for the best interests of the individual involved, furnish to the adoptive parents, or to the individual, or to any proper person acting in their behalf, a certified copy or abstract of the decree of adoption, or a certificate of adoption in such form as is approved by the court. If the parental rights of a parent or the parents of a minor child have been judicially terminated under

chapter 571 prior to the entry of the decree, a certified copy of the decree shall be filed in the termination proceeding.”

9. By amending section 578-15 to read as follows:

“Sec. 578-15 Secrecy of proceedings and records. The records in adoption proceedings, after the petition is filed and prior to the entry of the decree, shall be open to inspection only by the parties or their attorneys, the director of social services or his agent, or by any proper person on a showing of good cause therefor, upon order of the court. Except in the case of an individual being adopted by a person married to the legal father or mother of such individual, or unless authorized by the court, no petition for adoption shall set forth the name of the individual sought to be adopted or the name of either of the parents of the individual; provided, that the legal name of the individual and the name of each of the individual’s legal parents may be added to the petition by amendment during the course of the hearing thereof and shall be included in the decree. The hearing of the petition shall be in chambers and shall not be open to the public. Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided, that, upon the written request of the petitioner or petitioners, the court may waive the requirement that such records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except upon order of the family court.

The clerk of the court shall keep a docket of all adoption proceedings, which may be inspected only by order of the family court.”

10. By amending section 578-16 to read as follows:

“Sec. 578-16 Effect of adoption. A legally adopted individual shall be considered to be a natural child of the whole blood of the adopting parent or parents under chapter 532, relating to the descent of property, and the former legal parent or parents of an adopted individual and any other formal legal relatives or next of kin shall not be considered to be related to the individual under such provisions; and for all other purposes an adopted individual and his adopting parent or parents shall sustain towards each other the legal relationship of parents and child and shall have all the rights and be subject to all the duties of that relationship, the same as if the individual were the natural child of the adopting parent or parents, and all such duties and rights as between the individual and his former legal parent or parents shall cease from the time of the adoption; provided, that if the individual is adopted by a person married to a legal parent of the individual, the full reciprocal rights and duties which theretofore existed between the legal parent and the individual, and the rights of inheritance as between the individual and the legal parent and the legal relatives of the parent, shall continue, notwithstanding the adoption, subject only to the rights acquired by and the duties imposed upon the adoptive parent by reason of the adoption. An individual legally adopted under the laws of any state or territory of the United States or under the laws of any nation shall be accorded the same rights and benefits in all respects as an individual adopted under this chapter.”

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11. By adding a new section to be appropriately designated and to read as follows:

“Sec. 578- Adoption. Any minor child or an adult who is a niece, nephew, or stepchild of one of the adopting parents may be adopted under this chapter; provided that the adult to be adopted must give his written consent to the adoption.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 4, 1976.)

*Edited accordingly.