

ACT 100

S.B. NO. 1156

A Bill for an Act Relating to Legitimation.

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

SECTION 1. Section 338-1, Hawaii Revised Statutes, is amended by amending the definition of “legitimation” to read as follows:

““Legitimation” is the process by which a child born out of wedlock assumes the legal status and the rights, privileges, duties, and obligations of a child who is born in wedlock. [Legitimation occurs:

- (1) When the natural parents marry each other;
- (2) When the unmarried natural father voluntarily acknowledges the unmarried natural father’s child born out of wedlock through

an affidavit of each parent where they identify the child as theirs and the other parent as the mother or father;

- (3) When the parent and child relationship is established under chapter 584; or
- (4) When a child born out of wedlock is adopted.]”

SECTION 2. Section 338-21, Hawaii Revised Statutes, is amended to read as follows:¹

“(a) All children born out of wedlock, irrespective of the marriage of either natural parent to another, become legitimate (1) on the marriage of the natural parent¹ with each other, (2) on the voluntary, written [acknowledgement] acknowledgements of paternity under oath signed by the natural father and the natural mother, or (3) on establishment of the parent and child relationship under chapter 584, and are entitled to the same rights as those born in wedlock and shall take the name so stipulated by their parents or, if the parents do not agree on the name, shall take the name specified by a court of competent jurisdiction to be the name that is in the best interests of the child. If legitimation is accomplished before the original certificate of birth is filed with the department of health, the original certificate of birth shall contain the name so stipulated. The child or children or the parents thereof may petition the department of health to issue a new original certificate of birth, and not a duplicate of the original certificate that has been amended, altered, or modified, in the new name of the legitimate child, and the department shall issue the new original certificate of birth upon being satisfied that the child or children has or have been legitimated. As used in this section “name” includes the first name, middle name, or last name.

(b) The evidence upon which the new original certificate is made, and the superseded original certificate shall be sealed and filed and may be opened only upon order of a court of record.

(c) [The legitimation of] If, after a child is legitimated pursuant to subsection (a)(2) or (a)(3) of this section [shall not preclude a subsequent legitimation.], the child’s natural parents marry each other and desire to change the child’s name, the child’s name may be changed and a new original certificate of birth prepared as if a legitimation pursuant to subsection (a)(1) had just occurred.

(d) Nothing in this section shall be construed to limit the power of the courts to order the department of health to prepare new certificates of birth under section 584-23.”

SECTION 3. Section 584-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) 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;¹ 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 a writing filed with the department of health, which shall promptly inform the mother of the filing of the acknowledgement, and she does not dispute the acknowledgement 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, acknowledgement may be effected only with the written consent of the presumed father or after the presumption has been rebutted. If the acknowledgement 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] files with the department of health:
 - (A) A voluntary, written acknowledgement of paternity of the child signed by him under oath; and
 - (B) A voluntary, written acknowledgement of paternity of the child signed by the natural mother under oath.

The department of health shall prepare a new certificate of birth for the child in accordance with section [584-23.] 338-21."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 30, 1987.)

Note

- 1. So in original.