

ACT 338

H.B. NO. 2089

A Bill for an Act Relating to Adoption.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$100,000.00, or 0.0039 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 2. Section 338-20, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) [Such] The sealed documents[, except for the information form provided for in section 578-14.5,] may be opened by the department only by an order of a court of record[.] or when requested in accordance with section 578-

14.5 or 578-15. Upon receipt of a certified copy of a court order setting aside a decree of adoption, the department shall restore the original certificate to its original place in the files.”

SECTION 3. Section 338-20.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) After preparation of the new certificate of birth in the new name of the adopted person, the department of health shall seal and file the certified copy of the adoptive decree, the investigatory report and recommendation of the director of [social] human services if any, the report constituting the original certificate of birth, and the request for a new certificate of birth. [Such] The sealed documents may be opened by the department only by an order of a court of record[,] or when requested in accordance with section 578-14.5 or 578-15. The new certificate of birth shall show the true or probable foreign country of birth, and that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents.”

SECTION 4. Section 578-14, Hawaii Revised Statutes, is amended to read as follows:

“**§578-14 Record of adoption.** (a) 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] the decree has become effective, shall 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, upon request of both adoptive parents, or the sole adoptive parent if there is only one, that the name or names of either or both of the natural parents appear on the certificate, with the name of a natural parent who consents to be named on the certificate[, and shall then cause to be].

(b) If a new birth certificate is issued, the original birth certificate shall be sealed and filed [the original birth certificate of the individual] with the decree or the abstract thereof, and [such] the sealed package shall be opened only [by order of a court of record.] as provided in section 578-15(b).

(c) 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] those authorities take appropriate action with respect to the record of the 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] the action is for the best interests of the individual involved, shall 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] a 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.”

SECTION 5. Section 578-15, Hawaii Revised Statutes, is amended to read as follows:

“§578-15 Secrecy of proceedings and records. (a) 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 human services or the director’s 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] the 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.

(b) 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] the 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]:

- (1) Upon order of the family court[,] upon a showing of good cause;
- (2) For adoptions which occurred prior to January 1, 1991, after the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or the adoptive parents in accordance with the following:
 - (A) Within thirty calendar days after receipt of a request for inspection, the family court, by registered mail with return receipt requested, shall mail to the last known address of each natural parent a notice of the request for inspection of adoption records, a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents filed in support of the request. The notice shall inform the natural parent that unless an affidavit signed by the natural parent requesting confidentiality is received by the family court within sixty calendar days of the date of the notice, the natural parent will be deemed to have waived any rights of confidentiality and the records shall be subject to inspection by the adopted individual or the adoptive parent who filed the request. The notice shall also inform the natural parent that an affidavit requesting confidentiality for a period of ten years may be filed. An affidavit to be completed and signed by the natural parent to request confidentiality shall be mailed with the notice;
 - (B) If the family court has received a return receipt for the notice sent but an affidavit requesting confidentiality is not received by the family court within sixty calendar days of the date of the notice, the family court shall allow inspection under this section;
 - (C) If a notice by registered mail is undeliverable to a natural parent, the family court shall designate an agent or agency to conduct a good faith and diligent search to locate the natural parent and to provide the notice and all other documents required under subparagraph (A). The search shall extend over a period of one hundred twenty calendar days. Contacts

- with natural parents by a designated agent or agency under this section shall be personal and confidential and shall not be made by mail. The family court shall provide the designated agent or agency with a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents filed in support of the request, and the designated agent or agency shall present the copies to the natural parent when contacted. The family court and the designated agent or agency shall ensure that no person other than a natural parent or the agent or agency through which a natural parent obtained assistance for the adoption is informed of the adoptive individual's existence and the relationship to the natural parent;
- (D) If a natural parent cannot be located after the search conducted under subparagraph (C), the family court shall allow inspection under this section;
- (E) If an affidavit requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the notice provided under subparagraph (A) or (C), the family court shall not allow inspection during the effective period of the affidavit;
- (F) If a ten-year affidavit is filed under subparagraph (E), the natural parent may refile affidavits every ten years thereafter to maintain confidentiality, or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits subsequent to the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit. If there is no effective affidavit on file with the family court at the time a request for inspection is received by the court, the court shall allow inspection under this paragraph;
- (G) An affidavit requesting confidentiality shall be effective until the last day of the period for which the affidavit was filed, until the natural parent revokes the affidavit, or until the natural parent is deceased, whichever occurs sooner; and
- (H) Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any identifying information concerning the other natural parent;
- (3) For adoptions occurring after December 31, 1990, in accordance with the following:
- (A) At the time of the placement of the adopted individual for adoption, the family court shall inform each natural parent of the procedures required under this paragraph if the natural parent desires to maintain confidentiality after the adopted individual attains the age of eighteen;
- (B) Within ninety calendar days before the adopted individual attains the age of eighteen a natural parent may file an affidavit with the family court to request confidentiality and the natural parent may refile affidavits every ten years thereafter to maintain confidentiality or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits after the initial affidavit may be filed

within ninety calendar days before the last effective day of the initial affidavit;

(C) If a natural parent declines or fails to file an affidavit under subparagraph (B), the family court shall allow inspection of the record by the adopted individual or the adoptive parents at any time after the adopted individual has attained the age of eighteen; and

(D) Where two natural parents are involved and confidentiality is waived under this paragraph by only one parent, the inspection of the records shall not include any identifying information concerning the other natural parent;

(4) For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by a natural parent; provided that the adopted individual shall have the same rights and obligations applicable to natural parents under paragraph (2), including rights of notice and opportunity to file affidavits requesting confidentiality.

(5) For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission of an affidavit by a natural parent consenting to the inspection of records by the adoptee or an affidavit submitted by an adoptee consenting to the inspection of records by the natural parents; provided that where only one natural parent files an affidavit for consent, the inspection of records shall not include any identifying information concerning the other natural parent;

(6) Upon request by the adopted individual or the adoptive parents for information contained in the records concerning ethnic background and necessary medical information, notwithstanding any affidavit requesting confidentiality; or

(7) Upon request by a natural parent for a copy of the original birth certificate.

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

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000.00 or so much thereof as may be necessary for fiscal year 1990-1991, for the purposes of this Act. The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 1991.

(Approved July 9, 1990.)