

A Bill for an Act Relating to Adoption and Amending Chapter 331, Revised Laws of Hawaii 1955, as Amended.

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

SECTION 1. Purpose. The purpose of this Act is to update and clarify the present adoption law, make it consistent with the provisions of the Family Court Act of 1965 as well as certain provisions of the Uniform Adoption Act, expand the court's jurisdiction and in general, promote the welfare and best interest of children sought to be adopted.

SECTION 2. Section 331-1 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

“331-1. 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 a judge of the family court of the circuit in which he or they reside or are in military service or a judge of the family court of the circuit in which the child resides or was born or in which a child placing organization approved by the department under the provisions of section 108-11 having legal custody (as defined in section 333-2(k) of the Revised Laws of Hawaii 1955) of the child is located, for leave to adopt a minor child toward whom he or they do not sustain the legal relationship of parent and child and for a change of the name of the child. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the judge exercising jurisdiction in adoption proceedings.”

SECTION 3. Section 331-2 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

“331-2. Consent to Adoption. (a) Persons Required to Consent to Adoption. Unless consent is not required under paragraph (b) hereof, a petition to adopt a child may be granted only if written consent to the proposed adoption has been executed by:

- (1) each living parent of a legitimate child;
- (2) the mother of an illegitimate child;
- (3) any person or agency having legal custody of the child or legally empowered to consent;
- (4) 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;

(5) the child to be adopted if more than 10 years of age, unless the court in the best interest of the child dispenses with the child's consent.

(b) Persons as to Whom Consent and Notice Not Required. Consent to adoption is not required of:

- (1) a parent who has deserted a child without affording means of identification for a period of 90 days or who has voluntarily surrendered the care and custody of the child to another for a period of two years;

(2) a parent of a child in the custody of another, if the parent for a period of at least two years 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, as required by law or judicial decree;

(3) the natural father of an illegitimate child who has not legally been legitimated either prior to the placement of the child with adoptive parents or prior to the execution of a valid consent by the mother of the child;

(4) a parent whose parental rights have been judicially terminated under the provisions of chapter 333, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take such action;

(5) a parent judicially declared mentally incompetent or mentally retarded if the judge dispenses with such parent's consent;

(6) 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 60 days or who, after examination of his written reasons for withholding consent, is found by the court to be withholding his consent unreasonably.

(c) 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 has not consented to the proposed adoption, but who is alleged to come within the provisions of paragraphs (b) (1) or (b) (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, or a child placing organization approved by the department under the provisions of section 108-11 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.

(d) 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 or to a child placing organization approved by the department under the provisions of section 108-11, or to any other proper person not forbidden by law to place or receive a child for adoption, may not be withdrawn or repudiated after the child has been placed for adoption, without the express approval of the judge based upon a written finding that such action will be for the best interests of the child.

(e) 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 hereunder shall be barred from maintaining any action based upon medical or surgical care or treatment given to the child with the permission of

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the petitioner or petitioners or the person or agency authorized by the parental consent to select and 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.”

SECTION 4. Section 331-3 of the Revised Laws of Hawaii 1955 is hereby amended to read as follows:

“**331-3. Custody of child pendente lite.** At any stage of the proceeding subsequent to the filing of the petition and prior to the entry of a decree, the judge, upon a showing that the best interests of the child will be served thereby, may order that the petitioner or petitioners shall be entitled to retain the custody and control of the child and shall be responsible for the care, maintenance and support of the child including any necessary medical or surgical treatment, pending the further order of the court. Such order may also authorize and legally obligate the petitioner or petitioners to arrange for the burial of the child if the child shall die prior to the entry of the decree.”

SECTION 5. Notwithstanding the adoption of Act 16, Session Laws of Hawaii 1968, this Act shall have full force according to its intent. Upon the taking effect of this Act or the Hawaii Revised Statutes, whichever occurs later, this Act shall be construed to be in amendment of or in addition to the Hawaii Revised Statutes, all references in this Act being construed to refer to the applicable or corresponding provisions of the Hawaii Revised Statutes.

The revisor of statutes may reword and renumber the references in this Act and make such other formal or verbal changes as may be necessary to conform with the Hawaii Revised Statutes.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 11, 1969.)