

## ACT 117

H.B. NO. 1783

A Bill for an Act Relating to Adoption.

*Be it Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 578, Hawaii Revised Statutes, is amended in the following respects:

(1) Section 578-2 is amended to read 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 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) 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(c);

- (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 30 days after said 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) 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 §578-2(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 30 days after said 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 the provisions of 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.
  - (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 §578-2(a) (3) or (4) or (5) herein, upon a 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 said 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.
- (c) 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 af-

ter 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 HRS §338.

(d) 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 paragraph 2(a) and who has not consented to the proposed adoption, but who is alleged to come within the provisions of paragraphs (b) (1) (A) or (b) (1) (B) 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 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.

(e) 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 the provisions of section 346-17, 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 court based upon a written finding that such action will be for the best interests of the child.

(f) 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."

(2) A new section to be numbered 578-17 is added to read as follows:

"**Sec. 578-17 Guardian ad litem.** Upon a finding by the court, in any stage of a proceeding under this chapter, that the best interests of a child whose adoption is sought herein will be served by the appointment of a guardian ad litem for said child, the court may appoint a guardian ad litem to preserve, protect and promote the best interests of the child."

SECTION 2. Statutory material to be repealed is bracketed. New ma-

material is underscored. In printing this Act, the revisor of statutes may exclude the brackets, the bracketed material, or the underscoring.\*

**SECTION 3.** This Act shall take effect on July 1, 1975.

(Approved May 17, 1975.)

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\*Edited accordingly.