

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL

2 HOUSE BILL NO. 254

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoptions."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 Section 1. Sec. 21-3-11, ACLA 1949 is repealed and re-enac-
9 ted to read as follows:

10 Sec. 21-3-11. WHO MAY ADOPT AND JURISDICTION. a. Any
11 person not married, any husband and wife jointly, either
12 spouse when the object of adoption is the child of the other
13 spouse, or either husband or wife who are not living to-
14 gether as such, may petition the district magistrate court
15 for the adoption of any person.

16 b. An adoption proceeding is commenced by filing a
17 verified petition in the district magistrate court in the
18 judicial district in which either the petitioner or the per-
19 son to be adopted resides. If brought in the judicial dis-
20 trict of the residence of the petitioner the person to be
21 adopted must be lawfully brought within the judicial dis-
22 trict prior to the entry of the final decree.

23 Sec. 2. Sec. 21-3-12, ACLA 1949 as amended by Ch. 13, SLA
24 1951, is repealed and re-enacted to read as follows:

25 Sec. 21-3-12. CONSENT REQUIRED, a. For the purposes
26 of this Act, "minor" means any person under 19 years of age,
27 "Department" means the Department of Health and Welfare,
28 and "Bureau" means the Bureau of Vital Statistics.

29 b. Written consents as required by this section may

1 be filed with the petition or at any time after the petition
2 has been filed but before the hearing as prescribed in Sec.
3 21-3-15. Before a hearing may be had on a petition for the
4 adoption of any person, written consents must be executed
5 and filed by:

6 (1) The person to be adopted, if the person is
7 14 years of age or older, but the filing of the consent does
8 not obviate the necessity of filing other consents as re-
9 quired in the adoption of a minor.

10 (2) Each of the living parents, if the person to
11 be adopted is a minor of legitimate birth or one whose birth
12 has been subsequently legitimized, except as provided in
13 Sec. 21-3-13.

14 (3) The mother only, if living, if the person to
15 be adopted is a minor of illegitimate birth and not subse-
16 quently legitimized, except as provided in Sec. 21-3-13.
17 In adoptions of this category the consent of the natural
18 father need not be obtained or notice given him.

19 (4) The legal guardian of the minor, if the
20 authority to consent to an adoption has been legally acquired
21 by the guardian.

22 (5) The executive head of the Department or his
23 designee in cases where the minor has been committed to the
24 Department and authority to consent has been granted the
25 Department.

26 c. Any consent filed in connection with a petition
27 for adoption may be withdrawn at any time prior to the con-
28 clusion of the hearing.

29 d. Consents by persons who do not wish knowledge of

1 where the minor is to be placed need not specify the name of
2 the proposed adopter.

3 e. Every consent shall be verified as to the truth
4 thereof and acknowledged before a Notary Public, or other
5 person authorized to administer oaths, to the effect that
6 the consent was executed voluntarily by the signer thereof.

7 Sec. 3. Sec. 21-3-13, ACLA 1949 is repealed and re-enacted
8 to read as follows:

9 Sec. 21-3-13. CONSENT NOT REQUIRED. No consent for
10 adoption of a minor is required as follows:

11 (1) From a parent who was more than one year
12 prior to the filing of a petition judicially determined to
13 be of unsound mind unless the disability has been removed,
14 or whose parental rights have been terminated for reasons
15 of mental illness in any judicial proceeding.

16 (2) From a parent who is imprisoned in the peni-
17 tentiary at the time of the filing of the petition, under
18 sentence for a term of not less than three years.

19 (3) From a parent whose abandonment of a minor
20 has been previously established and whose parental rights
21 have been terminated in any judicial proceeding.

22 (4) From a parent judicially determined to be an
23 unfit person to have the care and custody of the minor and
24 whose parental rights have been terminated in any judicial
25 proceeding.

26 (5) From a divorced parent who was not awarded
27 full or parttime custody of their minor child. However,
28 personal service of a copy of the petition and notice of
29 hearing upon the parent within or without the state must be

1 accomplished in all cases not less than 20 days prior to the
2 date of the hearing. If after due diligence personal service
3 cannot be had upon a parent as required by this section, no-
4 tice may instead be given by sending the petition and notice
5 to him by first class registered mail postage prepaid directed
6 to his last known address at least 30 days prior to the date
7 of hearing.

8 Sec. 4. Sec. 21-3-14, ACLA 1949 is repealed and re-enacted
9 to read as follows:

10 Sec. 21-3-14. PETITION. a. An adoption petition shall
11 contain (1) allegations as to all material facts indicating
12 that the petitioners are fit and proper persons, (2) the new
13 name, if any, to be given the person to be adopted, and (3)
14 a statement as to whether the person or persons named as
15 exercising actual care and custody of the minor have agreed
16 to the adoption and are willing to relinquish custody.

17 b. The petition shall be signed and verified under oath
18 by the proposed adopter or adopters. If the petition be by
19 one spouse to adopt a child of the other spouse, then it
20 must be approved under oath by such other spouse.

21 c. A consent filed concurrently with the petition shall
22 be deemed to be an admission of all the material allegations
23 of the petition and a waiver of service of process and notice
24 of hearing as well as a consent to the exercise of jurisdic-
25 tion. Consents filed after filing of petition must embody
26 an acceptance of service of petition and notice of hearing
27 and waiver of further notice.

28 Sec. 5. Sec. 21-3-15, ACLA 1949 is repealed and re-enacted
29 to read as follows:

1 Sec. 21-3-15. HEARING, NOTICE AND INVESTIGATION. a.
2 Upon the filing of a petition and consents as required by
3 this Act, the court shall by order fix the place and time of
4 hearing, which shall be not less than 30 days after the entry
5 thereof. Notice of the time and place of the hearing and a
6 copy of the petition shall be served on the custodian of the
7 minor not later than 20 days before the date set for the hear-
8 ing unless a consent to adoption by the custodian is filed
9 prior to the mailing of the notice. Notice of the hearing
10 shall also be mailed to the Department not later than 30 days
11 before the date set for hearing. All notices of the hearing
12 required by this Act shall be accompanied by a true copy of
13 the petition when service is made. Prior to hearing, a re-
14 turn by affidavit as to personal service or mailing of notice
15 shall be filed in the action showing compliance herewith.

16 b. Any time after the filing of a petition for adoption
17 the court may order an investigation to be made by the De-
18 partment or by a representative designated by the court, and
19 may order that a report of the investigation be filed with
20 the court within the time fixed by the court. The investiga-
21 tion may include any information regarding the circumstances
22 and conditions which may have a bearing on the adoption as
23 directed by the court order.

24 Sec. 6. Sec. 21-3-16, ACLA 1949 is amended to read as
25 follows:

26 Sec. 21-3-16. FILING OBJECTIONS AND CONTINUANCE OF
27 HEARING. Any interested person may file objection to the
28 granting of any adoption, but such objection shall not be con-
29 sidered by the Court unless the person filing the same shall

1 appear and testify in support of the objection when any
2 parent, person having custody of the minor [CHILD], or per-
3 son seeking adoption of a minor [CHILD] shall require the
4 presence at such hearing of the person making the objection,
5 and in such event such person making such objection may be
6 subjected to cross-examination. Any interested person for
7 good cause shown may apply for a continuance of said hearing,
8 and the Court may defer, delay or continue any hearing in the
9 furtherance of justice upon good cause being shown for such
10 delay or continuance.

11 Sec. 7. Sec. 21-3-17, ACLA 1949 is amended to read as
12 follows:

13 Sec. 21-3-17. HEARING. A hearing in chambers shall be
14 had upon the petition at the time and place duly specified,
15 and be conducted as in a proceeding of an equitable nature.
16 Such proceeding shall be without a jury and the rules of
17 evidence may be relaxed. The general public shall be exclu-
18 ded, but for good and sufficient reasons compatible with the
19 best interest of the minor [CHILD], the Court may permit any
20 person or persons to be present.

21 Sec. 8. Sec. 21-3-18, ACLA 1949 is amended to read as
22 follows:

23 Sec. 21-3-18. DECREE AND ORDER. a. Upon the conclu-
24 sion of such hearing, the Court shall enter its decree either
25 granting or denying the petition, as follows: If the Court
26 is satisfied with the identity and relations of the persons,
27 and that the petitioner is of sufficient ability and in all
28 respects a fit and proper person to bring up the minor
29 [CHILD], and all other requirements of this Act have been

1 met, the petition shall be granted; otherwise the petition
2 shall be denied and the Court shall determine the matter of
3 custody of the minor. The decree will be final unless
4 reversed on appeal to the superior court [DISTRICT COURT].

5 b. Appeal may be taken in the manner provided for
6 appeals from the district magistrate court in other civil
7 matters [HAD AS IN OTHER PROBATE CASES], and the Department
8 [OF PUBLIC WELFARE] may exercise said right of appeal in any
9 case where the minor [CHILD] has been previously committed
10 to its custody [AND STATED IN SECTION 2(E) HEREOF]. If the
11 decree grants adoption, and, in the event of appeal the
12 decree [,] is sustained [BY THE DISTRICT COURT], it shall be
13 final. A final decree shall, however, be subject to the pro-
14 visions of Section 21-3-19 [9 HEREOF] before becoming abso-
15 lute. This decree so entered shall become effective as of
16 the date the petition for adoption was filed, and shall con-
17 tain an order granting custody of the minor [CHILD] to the
18 adoptive parent or parents, and, if same has been requested,
19 the issuance and filing of a substitute birth certificate as
20 hereinafter provided.

21 Sec. 9. Sec. 21-3-19, ACLA 1949 is amended to read as
22 follows:

23 Sec. 21-3-19. WHEN FINAL DECREE ABSOLUTE [, WHEN].
24 Within six months after the entry of the final decree any
25 parent who has not received actual notice of the adoption
26 proceeding in time to appear or object thereto may move to
27 vacate the decree, and for an award of the custody of the
28 adopted minor [CHILD] to him; providing, that such motion
29 shall not be entertained unless accompanied by an affidavit

1 disclosing good grounds for objection to the adoption. If
2 it appears to the satisfaction of the Court that there are
3 good grounds and sufficient reasons for setting aside the
4 adoption and if the allegations of the affidavit are true,
5 the Court may order a hearing upon said motion, fix a time
6 and place therefor, specify the parties to be notified which
7 shall include all interested parties present at the original
8 proceeding with ample time for their appearance, and upon
9 such hearing the Court may deny the motion or grant the same
10 by setting aside the adoption and make a re-determination of
11 who shall have the custody of said minor [CHILD]. No such
12 motion shall be granted unless the person filing the same is
13 a fit and proper person and otherwise entitled to the exclu-
14 sive custody of such minor [CHILD] as shown by the evidence
15 at such hearing. Appeal may be taken as from a final decree
16 Sec. 10. Sec. 21-3-20, ACLA 1949 as repealed and re-enacted
17 by Ch. 66, SLA 1951, is amended to read as follows:

18 Sec. 21-3-20. SUBSTITUTE BIRTH CERTIFICATE. a. [(A)]
19 As soon as the final decree of adoption and change of name
20 has been entered in any Court of competent jurisdiction, the
21 adoptive [FOSTER] parents may request the Bureau [OF VITAL
22 STATISTICS] to prepare a substitute certificate of birth for
23 the child so adopted, if born in Alaska. [(] If born in
24 another state, this request should be sent to that state [,]
25 where the birth certificate is on file. [)] If adopted in
26 Alaska, the official Record of Adoption sent by the Court
27 [U. S. COMMISSIONER] to the Bureau [OF VITAL STATISTICS] is
28 sufficient evidence that the adoption is final. If adopted
29 outside Alaska, the adoptive [FOSTER] parents must request

1 the Court which granted the adoption to send a certified
2 copy of the decree to the Bureau.

3 b. Upon receipt of the request and necessary statis-
4 tical particulars of the adoptive [FOSTER] parents, the
5 Bureau shall prepare a substitute birth certificate for the
6 person [CHILD] so adopted. The substitute certificate shall
7 contain the name of the person adopted [CHILD] as determined
8 in the decree, the names of the adoptive [FOSTER] parents,
9 and the statistical particulars concerning the adoptive
10 [FOSTER] parents as of the time of this birth. The date and
11 place of birth, the attendant's name, and the recording
12 dates shall remain the same as on the original. Nothing
13 shall be entered on the substitute certificate concerning
14 the natural parents of the person adopted [CHILD], nor con-
15 cerning the legitimacy of the birth, nor shall anything
16 appear on the certificate stating that it is a substitute
17 birth certificate. The intent of this section is to enable
18 the preparation of a birth certificate for the adopted per-
19 son [CHILD] as nearly as possible like that of other persons
20 [CHILDREN].

21 c. [(B)] The Bureau [OF VITAL STATISTICS] immediately
22 upon completion of such substitute certificate shall seal the
23 original record of birth, together with all records pertain-
24 ing to the adoption, and thereafter the original record so
25 sealed may be opened only upon demand of the person [CHILD]
26 so adopted upon his having attained his majority, if he is a
27 minor, or upon order of any Court of competent jurisdiction.
28 The substitute certificate shall be filed in place of the
29 original so removed, and a copy of the substitute certifi-

1 cate sent to the magistrate or other authorized local offi-
2 cial [U. S. COMMISSIONER] having on file the copy of this
3 same original certificate. Such magistrate or other author-
4 ized local official [U. S. COMMISSIONER] shall forthwith
5 enter the copy of the substitute certificate in his files in
6 place of the copy of the original on file. Upon such filing
7 of the substitute birth certificate, the magistrate or other
8 authorized local official [COMMISSIONER] shall seal the copy
9 of the original birth certificate, and it may thereafter be
10 opened only upon the same conditions as hereinabove pre-
11 scribed for the Bureau [OF VITAL STATISTICS].

12 d. [(C)] Upon request for issuance of a certified copy
13 of a birth certificate after the substitute certificate has
14 been filed, the magistrate or other authorized local offi-
15 cial [U. S. COMMISSIONER] or the Bureau [OF VITAL STATIS-
16 TICS], as the case may be, shall as a matter of course issue
17 a certified copy of the substitute birth certificate and
18 such certified copy shall be accepted in all Courts and
19 places as prima facie evidence of the date and place of
20 birth of the person therein named.

21 e. [(D)] In all cases where a final decree of adoption
22 is set aside, as provided elsewhere in this Act, the Court
23 taking such action shall immediately notify the Bureau [OF
24 VITAL STATISTICS] concerning such action. The Bureau shall,
25 in such cases, remove the substitute certificate and replace
26 it with the original certificate which had been sealed away.
27 The Bureau shall notify the proper magistrate or other
28 authorized local official [U. S. COMMISSIONER] to do like-
29 wise.

1 Sec. 11. Sec. 21-3-21, ACLA 1949 is amended to read as
2 follows:

3 Sec. 21-3-21. EFFECT OF ADOPTION [ADOPTION TERMINATES
4 RELATIONSHIP OF PARENT AND CHILD]. a. By a decree of adop-
5 tion, the natural parents, other than a spouse of an adop-
6 ter, shall be divested of all legal rights and obligations
7 in respect to such person adopted [CHILD], and the person
8 adopted [CHILD] shall be free from all legal obligations of
9 obedience and maintenance in respect to them, and shall be,
10 to all intents and purposes, and as to all legal incidents,
11 the child, legal heir, and lawful issue of his or her adop-
12 ter or adopters. The person adopted shall be [,] entitled
13 to all rights and privileges, including the right of inheri-
14 tance, which includes but is not limited to those rights pro-
15 vided in Sections 59-4-1 and 59-4-3, ACLA 1949, and the
16 right to take testamentary disposition, and shall be subject
17 to all the obligations of a child of the adopter or adopters
18 as though begotten by them in lawful wedlock.

19 b. An adopter or adopters and the spouse of an adopted
20 person [CHILD], and their respective kin, shall have the
21 rights of inheritance from such adopted person [CHILD] as
22 prescribed by the statutes of descent and distribution for
23 natural parents, spouse and their respective kin to the
24 exclusion of the adopted person's [CHILD'S] natural parents
25 and kin, and any prior adopter or adopters and their kin;
26 provided, that in cases where a natural parent is the spouse
27 of an adopter, such natural and adopted parent and kin shall
28 inherit the same as natural parents and their kin.

29 Sec. 12. Sec. 21-3-22, ACLA 1949 is amended to read as

1 follows:

2 Sec. 21-3-22. RECORDS TO BE SEALED. All records of any
3 proceedings hereunder shall, after final termination, be
4 sealed and shall not thereafter be open to inspection by any
5 person except upon order of the Court, for good cause shown
6 and thereafter shall be again sealed as before.

7 [ORIGINAL BIRTH RECORDS NOW ON FILE IN THE OFFICE OF THE
8 REGISTRAR OF VITAL STATISTICS OF ANY CHILD ADOPTED SINCE 1913,
9 SHALL BE SEALED AND SUBSTITUTE BIRTH CERTIFICATE ISSUED BY
10 SAID REGISTRAR IN THE MANNER AND FORM PRESCRIBED IN SECTION
11 10 HEREIN, AND TRANSMITTED TO THE ADOPTERS.]

12 Sec. 13. Sec. 21-3-24, ACLA 1949 is repealed and re-enacted
13 to read as follows:

14 Sec. 21-3-24. RETROSPECTIVE EFFECT. In all adoption
15 proceedings, whether held before or after the effective date
16 of this Act, the magistrate or other authorized local offi-
17 cial shall, upon the request of the adoptive parent or parents
18 or person adopted, send a certified copy of the adoption
19 decree to the Bureau. The Bureau shall issue a substitute
20 birth certificate in the manner provided by this Act.

21 Sec. 14. The rule that statutes in derogation of common law
22 are to be strictly construed does not apply to the adoption laws
23 of this state.

24 Sec. 15. Any proceeding in which an adoption petition has
25 been filed prior to the effective date of this Act is not affected
26 by the provisions of this Act.

27
28
29