

Introduced: 1/15/73
Referred: Health, Welfare &
Education, Judiciary and
Finance

1 IN THE HOUSE

BY CHANCE

2 *SCS* HOUSE BILL NO. 70 *Am S*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the adoption of children."

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

8 * Section 1. AS 20 is amended by adding a new chapter to read:

9 CHAPTER 15. ADOPTION.

10 Sec. 20.15.010. WHO MAY BE ADOPTED. Any person may be adopted.

11 Sec. 20.15.020. WHO MAY ADOPT. The following persons may adopt:

- 12 (1) a husband and wife together although one or both are
13 minors;
- 14 (2) an unmarried adult;
- 15 (3) the unmarried father or mother of the person to be
16 adopted;
- 17 (4) a married person without the other spouse joining as a
18 petitioner, if the person to be adopted is not his spouse, and if
19 (A) the other spouse is a parent of the person to be
20 adopted and consents to the adoption;
- 21 (B) the petitioner and the other spouse are legally
22 separated; or
- 23 (C) the failure of the other spouse to join in the
24 petition or to consent to the adoption is excused by the court
25 by reason of prolonged unexplained absence, unavailability,
26 incapacity, or circumstances constituting an unreasonable with-
27 holding of consent.

28 Sec. 20.15.030. VENUE. (a) Proceedings for adoption shall be
29 brought in the superior court for the district in which, at the time

1 of filing or granting the petition, the petitioner or the person to be
2 adopted resides or is in military service or in which the agency having
3 the care, custody, or control of the minor is located.

4 (b) If the court finds in the interest of substantial justice
5 that the matter should be heard in another forum, the court may
6 transfer, stay or dismiss the proceeding in whole or in part on any
7 conditions that are just.

8 Sec. 20.15.040. PERSONS REQUIRED TO CONSENT TO ADOPTION. (a)
9 Unless consent is not required under sec. 50 of this chapter, a petition
10 to adopt a minor may be granted only if written consent to a particular
11 adoption has been executed by

12 (1) the mother of the minor;

13 (2) the father of the minor, if the father was married to
14 the mother at the time the minor was conceived or at any time after
15 conception, the minor is his child by adoption, or he has otherwise
16 legitimated the minor under the laws of the state;

17 (3) any person lawfully entitled to custody of the minor or
18 empowered to consent;

19 (4) the court having jurisdiction to determine custody of
20 the minor, if the legal guardian or custodian of the person of the
21 minor is not empowered to consent to the adoption;

22 (5) the minor, if more than 10 years of age, unless the
23 court in the best interest of the minor dispenses with the minor's
24 consent; and

(6) the spouse of the minor to be adopted.

25 (b) A petition to adopt an adult may be granted only if written
26 consent to adoption has been executed by the adult and the adult's
27 spouse.
28

29 Sec. 20.15.050. PERSONS AS TO WHOM CONSENT AND NOTICE NOT REQUIRED

1 (a) Consent to adoption is not required of

2 (1) a parent who has deserted a child without affording means
3 of identification, or who has abandoned a child;

4 (2) a parent of a child in the custody of another, if the
5 parent for a period of at least one year has failed significantly
6 without justifiable cause

7 (A) to meaningfully communicate with the child, or

8 (B) to provide for the care and support of the child
9 as required by law or judicial decree;

10 (3) the father of a minor if the father's consent is not
11 required by sec. 40(a)(2) of this chapter;

12 (4) a parent who has relinquished his right to consent under
13 sec. 180 of this chapter;

14 (5) a parent whose parental rights have been terminated by
15 order of the court under sec. 180 of this chapter;

16 (6) a parent judicially declared incompetent or mentally
17 defective if the court dispenses with the parent's consent;

18 (7) any parent of the person to be adopted, if the person
19 is 18 or more years of age and the court dispenses with the consent of
20 the parent;

21 (8) any legal guardian or custodian of the person to be
22 adopted, other than a parent, who has failed to respond in writing to
23 a request for consent for a period of 60 days or who, after examination
24 of his written reasons for withholding consent, is found by the court
25 to be withholding his consent unreasonably; or

26 (9) the spouse of the person to be adopted, if the failure
27 of the spouse to consent to the adoption is excused by the court by
28 reason of prolonged unexplained absence, unavailability, incapacity,
29 or circumstances constituting an unreasonable withholding of consent.

1 (b) Except as provided in sec. 100 of this chapter, notice of
2 a hearing on a petition for adoption need not be given to a person
3 whose consent is not required or to a person whose consent or relinquish-
4 ment has been filed with the petition.

5 Sec. 20.15.060. HOW CONSENT IS EXECUTED. (a) The required con-
6 sent to adoption shall be executed at any time after the birth of the
7 child in the presence of the court or in the presence of a person
8 authorized to take acknowledgments.

9 (b) A consent which does not name or otherwise identify the
10 adopting parent is valid if the consent is executed in the presence of
11 the court or a person authorized to take acknowledgments and contains
12 a statement by the person whose consent it is that the person consent-
13 ing voluntarily executed the consent irrespective of disclosure of the
14 name or other identification of the adopting parent.

15 Sec. 20.15.070. WITHDRAWAL OF CONSENT. (a) A consent to adoption
16 may not be withdrawn after the entry of a decree of adoption.

17 (b) A consent to adoption may be withdrawn before the entry of
18 a decree of adoption if the court finds, after notice and opportunity
19 to be heard is afforded to petitioner, the person seeking the with-
20 drawal, and the agency placing a child for adoption, that the with-
21 drawal is in the best interest of the person to be adopted and the
22 court orders the withdrawal.

23 Sec. 20.15.080. PETITION FOR ADOPTION. (a) The caption of a
24 petition for adoption shall be styled substantially "In the Matter of
25 the Adoption of". The person to be adopted shall be desig-
26 nated in the caption under the name by which he is to be known if the
27 petition is granted. If the child is placed for adoption by an agency,
28 any name by which the child was previously known may not be disclosed
29 in the petition, the notice of hearing, or in the decree of adoption.

1 (b) A petition for adoption shall be signed and verified by the
2 petitioner, filed with the clerk of the court, and state

3 (1) the date and place of birth of the person to be adopted,
4 if known;

5 (2) the name to be used for the person to be adopted;

6 (3) the date of placement of the minor and the name of the
7 person placing the minor;

8 (4) the full name, age, place and duration of residence of
9 the petitioner;

10 (5) the marital status of the petitioner, including the date
11 and place of marriage, if married;

12 (6) that the petitioner has facilities and resources, includ-
13 ing those available under a subsidy agreement, suitable to provide
14 for the nurture and care of the minor to be adopted, and that it is
15 the desire of the petitioner to establish the relationship of parent
16 and child with the person to be adopted;

17 (7) a description and estimate of value of any property of
18 the person to be adopted; and

19 (8) the name of any person whose consent to the adoption is
20 required, but who has not consented, and facts or circumstances which
21 excuse the lack of his consent normally required to the adoption.

22 (c) A certified copy of the birth certificate or verification
23 of the birth record of the person to be adopted, if available, and the
24 required consents and relinquishments shall be filed with the clerk.

25 Sec. 20.15.090. REPORT OF PETITIONER'S EXPENDITURES. (a) Except
26 as specified in (b) of this section, the petitioner in any proceeding
27 for the adoption of a minor shall file, before the petition is heard,
28 a full accounting report in a manner acceptable to the court of all
29 disbursements of anything of value made or agreed to be made by or on

1 behalf of the petitioner in connection with the adoption. The report
2 shall show any expenses incurred in connection with

- 3 (1) the birth of the minor;
4 (2) placement of the minor with petitioner;
5 (3) medical or hospital care received by the mother or by
6 the minor during the mother's prenatal care and confinement; and
7 (4) services relating to the adoption or to the placement
8 of the minor for adoption which were received by or on behalf of the
9 petitioner, either natural parent of the minor, or any other person.

10 (b) This section does not apply to an adoption by a step-parent
11 whose spouse is a natural or adoptive parent of the child.

12 (c) Any report made under this section must be signed and veri-
13 fied by the petitioner.

14 Sec. 20.15.100. NOTICE OF PETITION, INVESTIGATION AND HEARING.

15 (a) After the filing of a petition to adopt a minor, the court shall
16 fix a time and place for hearing the petition. At least 20 days before
17 the date of hearing, notice of the filing of the petition and of the
18 time and place of hearing shall be given by the petitioner to (1) the
19 department; (2) any agency or person whose consent to the adoption is
20 required by this chapter but who has not consented; and (3) a person
21 whose consent is dispensed with upon any ground mentioned in sec. 50-
22 (a)(1), (2), (6), (8) and (9) of this chapter but who has not consented.
23 The notice to the department shall be accompanied by a copy of the
24 petition.

25 (b) An investigation shall be made by the department or any other
26 qualified agency or person designated by the court to inquire into the
27 conditions and antecedents of a minor sought to be adopted and of the
28 petitioner for the purpose of ascertaining whether the adoptive home
29 is a suitable home for the minor and whether the proposed adoption is

1 in the best interest of the minor.

2 (c) A written report of the investigation shall be filed with the
3 court by the investigator before the petition is heard. The report
4 shall be filed within 30 days of the designation by the court of the
5 department, agency or person to make the investigation.

6 (d) The report of the investigation shall contain an evaluation
7 of the placement with a recommendation as to the granting of the peti-
8 tion for adoption and any other information the court requires regarding
9 the petitioner or the minor.

10 (e) Unless directed by the court, an investigation and report is
11 not required in cases in which an agency is a party or joins in the
12 petition for adoption, a step-parent is the petitioner, or the person
13 to be adopted is an adult. In other cases, the court may waive the
14 investigation only if it appears that waiver is in the best interest
15 of the minor and that the adoptive home and the minor are suited to
16 each other. The department which is required to consent to the adoption
17 may give consent without making the investigation.

18 (f) The department or the agency or persons designated by the
19 court to make the required investigation may request other departments
20 or agencies within or without this state to make investigations of
21 designated portions of the inquiry as may be appropriate and to make
22 a written report as a supplemental report to the court and shall make
23 similar investigations and reports on behalf of other agencies or
24 persons designated by the courts of this state or another state.

25 (g) After the filing of a petition to adopt an adult the court
26 by order shall direct that a copy of the petition and a notice of the
27 time and place of the hearing be given to any person whose consent
28 to the adoption is required but who has not consented. The court
29 may order an appropriate investigation to assist it in determining

1 whether the adoption is in the best interest of the persons involved.

2 (h) Notice shall be given in the manner appropriate under rules
3 of civil procedure for the service of process in a civil action in
4 this state or in any manner the court by order directs. Proof of the
5 giving of the notice shall be filed with the court before the petition
6 is heard.

7 Sec. 20.15.110. REQUIRED RESIDENCE OF MINOR. A final decree of
8 adoption may not be issued until the minor to be adopted, other than
9 a stepchild of the petitioner, has lived in the adoptive home and the
10 department or court has had an opportunity to observe or investigate
11 the adoptive home.

12 Sec. 20.15.120. HEARING. (a) The petitioner and the person to
13 be adopted shall appear at the hearing on the petition, unless the
14 presence of either is excused by the court for good cause shown.

15 (b) The court may continue the hearing from time to time to
16 permit further observation, investigation, or consideration of any
17 facts or circumstances affecting the granting of the petition.

18 (c) If at the conclusion of the hearing the court determines that
19 the required consents have been obtained or excused and that the adop-
20 tion is in the best interest of the person to be adopted, it may issue
21 a final decree of adoption.

22 (d) If the requirements for a decree under (c) of this section
23 have not been met, the court shall dismiss the petition and determine
24 the person to have custody of the minor, including the petitioners if
25 in the best interest of the minor.

26 Sec. 20.15.130. EFFECT OF ADOPTION DECREE. (a) A final decree
27 of adoption, whether issued by a court of this state or of any other
28 state, has the following effect as to matters within the jurisdiction
29 or before a court of this state:

1 (1) except with respect to a spouse of the petitioner and
2 relatives of the spouse, to relieve the natural parents of the
3 adopted person of all parental rights and responsibilities, and to
4 terminate all legal relationships between the adopted person and his
5 relatives, including his natural parents, so that the adopted person
6 thereafter is a stranger to his former relatives for all purposes
7 including inheritance and the interpretation or construction of docu-
8 ments, statutes, and instruments, whether executed before or after
9 the adoption is decreed, which do not expressly include the person by
10 name or by some designation not based on a parent and child or blood
11 relationship; and

12 (2) to create the relationship of parent and child between
13 petitioner and the adopted person, as if the adopted person were a
14 legitimate blood descendant of the petitioner, for all purposes includ-
15 ing inheritance and applicability of statutes, documents, and instruments,
16 whether executed before or after the adoption is decreed, which do not
17 expressly exclude an adopted person from their operation or effect.

18 (b) Notwithstanding the provisions of (a) of this section, if a
19 parent of a child dies without the relationship of parent and child
20 having been previously terminated and a spouse of the living parent
21 thereafter adopts the child, the child's right of inheritance from or
22 through the deceased parent is unaffected by the adoption.

23 Sec. 20.15.140. APPEAL AND VALIDATION OF ADOPTION DECREE. (a)
24 An appeal from any final order or decree rendered under this chapter
25 may be taken in the manner and time provided for appeal from a judgment
26 in a civil action.

27 (b) Subject to the disposition of an appeal, upon the expiration
28 of one year after an adoption decree is issued the decree may not be
29 questioned by any person including the petitioner, in any manner upon

1 any ground, including fraud, misrepresentation, failure to give any
2 required notice, or lack of jurisdiction of the parties or of the
3 subject matter, unless, in the case of the adoption of a minor the
4 petitioner has not taken custody of the minor, or, in the case of the
5 adoption of an adult, the adult had no knowledge of the decree within
6 the one-year period.

7 Sec. 20.15.150. CONFIDENTIAL NATURE OF HEARINGS AND RECORDS IN
8 ADOPTION PROCEEDINGS. (a) All hearings held in proceedings under this
9 chapter shall be held in closed court without admittance of any person
10 other than essential officers of the court, the parties, their wit-
11 nesses, counsel, persons who have not previously consented to the
12 adoption but are required to consent, and representatives of the
13 agencies present to perform their official duties.

14 (b) All papers and records pertaining to the adoption whether
15 part of the permanent record of the court or of a file in the depart-
16 ment or in an agency are subject to inspection only upon consent of
17 the court and all interested persons; or in exceptional cases, only
18 upon an order of the court for good cause shown.

19 (c) Except as authorized in writing by the adopted child if 14
20 or more years of age, or by the adoptive parent, or upon order of the
21 court for good cause shown in exceptional cases, no person is required
22 to disclose the name or identity of either an adoptive parent or an
23 adopted child.

24 Sec. 20.15.160. RECOGNITION OF FOREIGN DECREE AFFECTING ADOPTION.
25 A decree of court terminating the relationship of parent and child or
26 establishing the relationship by adoption issued under due process of
27 law by a court of any other jurisdiction within or without the United
28 States shall be recognized in this state and the rights and obligations
29 of the parties as to matters within the jurisdiction of this state

1 shall be determined as though the decree were issued by a court of
2 this state.

3 Sec. 20.15.170. BIRTH CERTIFICATES. Within 30 days after an
4 adoption decree becomes final, the clerk of the court shall, if
5 requested, prepare an application for a birth certificate in the name
6 of the adopted person and forward the application to the appropriate
7 vital statistics office of the place, if known, where the adopted
8 person was born and forward a copy of the decree to the department for
9 statistical purposes.

10 Sec. 20.15.180. RELINQUISHMENT AND TERMINATION OF PARENT AND
11 CHILD RELATIONSHIPS. (a) The rights of a parent with reference to a
12 child, including parental right to control the child or to withhold
13 consent to an adoption, may be relinquished and the relationship of
14 parent and child terminated in or before an adoption proceeding as
15 provided in this section.

16 (b) All rights of a parent with reference to a child, including
17 the right to receive notice of a hearing on a petition for adoption,
18 may be relinquished and the relationship of parent and child terminated
19 by a writing, signed by the parent, regardless of the age of the
20 parent,

21 (1) in the presence of a representative of an agency taking
22 custody of the child, whether the agency is within or without the state
23 or in the presence and with the approval of a court within or without
24 this state in which the minor was present or in which the parent
25 resided at the time it was signed, which relinquishment may be with-
26 drawn within 10 days after it is signed or the child is born, whichever
27 is later; and the relinquishment is invalid unless it states that the
28 parent has this right of withdrawal; or

29 (2) in any other situation if the petitioner has had custody

1 of the minor for two years, but only if notice of the adoption pro-
2 ceeding has been given to the parent and the court finds, after con-
3 sidering the circumstances of the relinquishment and the long continued
4 custody by the petitioner, that the best interest of the child requires
5 the granting of adoption.

6 (c) In addition to any other proceeding provided by law, the
7 relationship of parent and child may be terminated by a court order
8 issued in connection with an adoption proceeding under this chapter on
9 any ground provided by other law for termination of the relationship,
10 and in any event on the ground

11 (1) that the minor has been abandoned by the parent;

12 (2) that by reason of the misconduct, faults, or habits of
13 the parent or the repeated and continuous neglect or refusal of the
14 parent, the minor is without proper parental care and control, or
15 subsistence, education, or other care or control necessary for his
16 physical, mental, or emotional health or morals, or, by reason of
17 physical or mental incapacity the parent is unable to provide necessary
18 parental care for the minor, and the court finds that the conditions
19 and causes of the behavior, neglect, or incapacity are irremediable
20 or will not be remedied by the parent, and that by reason of this the
21 minor is suffering or probably will suffer serious physical, mental,
22 moral, or emotional harm; or

23 (3) that in the case of a parent not having custody of a
24 minor, his consent is being unreasonably withheld contrary to the best
25 interest of the minor.

26 (d) For the purpose of proceeding under this chapter, a decree
27 terminating all rights of a parent with reference to a child or the
28 relationship of parent and child issued by a court of competent juris-
29 diction in this or any other state dispenses with the consent to

1 adoption proceedings of a parent whose rights or parent and child
2 relationship are terminated by the decree and with any required notice
3 of an adoption proceeding other than as provided in this section.

4 (e) A petition for termination of the relationship of parent
5 and child made in connection with an adoption proceeding may be made
6 by

7 (1) either parent if termination of the relationship is
8 sought with respect to the other parent;

9 (2) the petitioner for adoption, the guardian of the person,
10 the legal custodian of the child, or the individual standing in
11 parental relationship to the child;

12 (3) an agency; or

13 (4) any other person having a legitimate interest in the
14 matter.

15 (f) Before the petition is heard, notice of the hearing on the
16 petition and opportunity to be heard shall be given the parents of the
17 child, the guardian of the person of the child, the person having legal
18 custody of the child, and, in the discretion of the court, a person
19 appointed to represent any party.

20 (g) Notwithstanding the provisions of (b) of this section, a
21 relinquishment of parental rights with respect to a child, executed
22 under this section, may be withdrawn by the parent, and a decree of
23 a court terminating the parent and child relationship under this sec-
24 tion may be vacated by the court upon motion of the parent, if the
25 child is not on placement for adoption and the person having custody
26 of the child consents in writing to the withdrawal or vacation of the
27 decree.

28 Sec. 20.15.190. ADOPTION ASSISTANCE. A minor in the permanent
29 custody of the department in a foster home for not less than one year

1 may not be denied the opportunity for a permanent home if the achieve-
2 ment of this depends on continued subsidy by the state.

3 Sec. 20.15.200. INVESTIGATION. Persons who are caring for a
4 minor on a foster parent basis and who have applied to adopt the minor
5 and to receive payments for the care and support of the minor shall be
6 evaluated as to their suitability as adoptive parents by means of
7 an adoptive home study. This home study shall be made by the commis-
8 sioner's adoption staff or on his behalf by an authorized agency which
9 provides adoption services.

10 Sec. 20.15.210. AMOUNT AND DURATION OF SUBSIDY PAYMENTS. The
11 monthly payment and the length of time for which a subsidy is granted
12 are left to the discretion of the commissioner and may vary from a
13 small monthly sum to an amount not exceeding the existing rate for
14 foster care until the child reaches the age of majority, if the need
15 continues to exist. Subsidies shall be paid from the same public funds
16 and in the same manner as foster care payments.

17 Sec. 20.15.220. ANNUAL REEVALUATION. After an adoption, with
18 subsidy, is final, the family is independent of the department except
19 for an annual evaluation by the department of the need for continued
20 subsidy and the amount of the subsidy.

21 Sec. 20.15.230. REGULATIONS. The department shall promulgate
22 regulations necessary to implement the provisions of secs. 190 - 240
23 of this chapter.

24 Sec. 20.15.240. DEFINITIONS. In this chapter, unless the context
25 otherwise requires,

26 (1) "adult" means an individual who has reached the age of
27 majority;

28 (2) "agency" means any person certified, licensed, or other-
29 wise specially empowered by law or regulation to place minors for

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adoption;

(3) "child" means a son or daughter, whether by birth or by adoption;

(4) "commissioner" means the commissioner of health and social services;

(5) "court" means the superior court of this state, and, when the context requires, the court of any other state empowered to grant petitions for adoption;

(6) "department" means the Department of Health and Social Services;

(7) "minor" means a person who has not reached the age of majority.

* Sec. 2. AS 20.10 is repealed.