

Original sponsor: Chance

Offered: 4/11/74  
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 70

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND 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. (a) The following persons may  
12 adopt:

13 (1) a husband and wife together;

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; or

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 agree to the adoption is excused by the court by  
25 reason of prolonged unexplained absence, unavailability, incapacity,  
26 or circumstances constituting an unreasonable withholding of  
27 consent.

28 (b) Nothing in this section affects legitimation under AS 25.-  
29 20.050.

1           Sec. 20.15.030. VENUE. (a) Proceedings for adoption shall be  
2 brought in the superior court for the district in which, at the time  
3 of filing or granting the petition, the petitioner or the person to be  
4 adopted resides or is in military service, or in which the agency having  
5 the care, custody, or control of the minor is located.

6           (b) If the court finds in the interest of substantial justice,  
7 under AS 22.10.040, that the matter should be heard in another judicial  
8 district, the court may transfer, stay or dismiss the proceeding in  
9 whole or in part on any conditions that are just.

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

14                   (1) the mother of the minor;

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

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

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

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

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

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

1 spouse or by the guardian or conservator of an incapacitated adult.

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

3 (a) Consent to adoption is not required of

4 (1) a parent who has abandoned a child without affording  
5 means of identification, or who has abandoned a child as determined  
6 under AS 47.10.080(c)(3)(B);

7 (2) a parent of a child in the custody of another, if the  
8 parent for a period of at least one year has failed significantly  
9 without justifiable cause, including but not limited to indigency,

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

11 (B) to provide for the care and support of the child

12 as required by law or judicial decree;

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

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

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

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

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

24 (8) any guardian or custodian specified in sec. 40(a)(3) or  
25 (4) of this chapter who has failed to respond in writing to a request  
26 for consent for a period of 60 days or who, after examination of his  
27 written reasons for withholding consent, is found by the court to be  
28 withholding his consent unreasonably; or

29 (9) the spouse of the person to be adopted, if the

1 requirement of consent to the adoption is waived by the court by reason  
2 of prolonged unexplained absence, unavailability, incapacity, or circum-  
3 stances constituting an unreasonable withholding of consent.

4 (b) Except as provided in sec. 100 of this chapter, notice of a  
5 hearing on a petition for adoption need not be given to a person whose  
6 consent is not required or to a person whose consent or relinquishment  
7 has been filed with the petition.

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

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

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

20 (b) A consent to adoption may be withdrawn before the entry of  
21 a decree of adoption, within 10 days, by delivering written notice to  
22 the person obtaining the consent, or after the 10-day period, if the  
23 court finds, after notice and opportunity to be heard is afforded to  
24 petitioner, the person seeking the withdrawal, and the agency placing  
25 a child for adoption, that the withdrawal is in the best interest of  
26 the person to be adopted and the court orders the withdrawal.

27 Sec. 20.15.080. PETITION FOR ADOPTION. (a) The caption of a  
28 petition for adoption shall be styled substantially "In the Matter of  
29 the Adoption of .....". The person to be adopted shall be

1 designated in the caption under the name by which he is to be known if  
2 the petition is granted. If the child is placed for adoption by an  
3 agency, any name by which the child was previously known may not be  
4 disclosed in the petition or in the decree of adoption.

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

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

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

10 (3) the date of placement of the minor and the name of the  
11 person placing the minor;

12 (4) the full name, age, place and duration of residence of  
13 the petitioner;

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

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

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

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

26 (c) A certified copy of the birth certificate or verification of  
27 the birth record of the person to be adopted, if available, and the  
28 required consents, relinquishments, and termination orders shall be  
29 filed with the clerk.

1           Sec. 20.15.090. REPORT OF PETITIONER'S EXPENDITURES. (a) Except  
2 as specified in (b) of this section, the petitioner in any proceeding  
3 for the adoption of a minor shall file, before the petition is heard,  
4 a full accounting report in a manner acceptable to the court of all  
5 disbursements of anything of value made or agreed to be made by or on  
6 behalf of the petitioner in connection with the adoption. The report  
7 shall show any expenses incurred in connection with

8           (1) the birth of the minor;

9           (2) placement of the minor with petitioner;

10           (3) medical or hospital care received by the mother or by  
11 the minor during the mother's prenatal care and confinement; and

12           (4) services relating to the adoption or to the placement  
13 of the minor for adoption which were received by or on behalf of the  
14 petitioner, either natural parent of the minor, or any other person.

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

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

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

20           (a) After the filing of a petition to adopt a minor, the court shall  
21 fix a time and place for hearing the petition. At least 20 days before  
22 the date of hearing, notice of the filing of the petition and of the  
23 time and place of hearing shall be given by the petitioner to (1) the  
24 department; (2) any agency or person whose consent to the adoption is  
25 required by this chapter, but who has not consented; and (3) a person  
26 whose consent is dispensed with upon any ground mentioned in sec. 50-  
27 (a)(1), (2), (3), (6), (7), (8) and (9) of this chapter, but who has  
28 not consented. The notice to the department shall be accompanied by  
29 a copy of the petition.

1 (b) Notice to persons specified in sec. 50 shall include a  
2 statement of the grounds under which consent to the adoption is not  
3 required. Notice given under this section shall be adequate to give  
4 actual notice of the proceedings, taking into account education and  
5 language differences which are known or reasonably ascertainable by  
6 the petitioner or the department. The notice of hearing shall contain  
7 all names by which the minor has been identified and shall state in  
8 summary form the effect of a decree of adoption. Notice shall be given  
9 in the manner appropriate under rules of civil procedure for the service  
10 of process in a civil action in this state or in any manner the court  
11 by order directs. Notice by publication may not be given. Proof of  
12 the giving of the notice shall be filed with the court before the  
13 petition is heard, subject to the time limitation in sec. 100(c) of  
14 this chapter.

15 (c) A reasonable investigation shall be made by the department  
16 or the petitioner to assure that all persons listed in (a) of this  
17 section are located and given notice of the proposed adoption. The  
18 investigation shall be conducted so that the rights of all parties  
19 are protected, including but not limited to the right to privacy and  
20 the right to be notified. An affidavit describing the investigation  
21 shall be filed with the court if all persons listed in (a) of this  
22 section are not located.

23 (d) Except as provided in (e) and (g) of this section, an  
24 investigation shall be made by the department or any other qualified  
25 agency or person designated by the court to inquire into the conditions  
26 and antecedents of a minor sought to be adopted and of the petitioner  
27 for the purpose of ascertaining whether the adoptive home is a suitable  
28 home for the minor and whether the proposed adoption is in the best  
29 interest of the minor.

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

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

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

19 (h) The department or the agency or persons designated by the  
20 court to make the required investigation may request other departments  
21 or agencies within or outside of this state to make investigations of  
22 designated portions of the inquiry as may be appropriate and to make  
23 a written report as a supplemental report to the court and shall make  
24 similar investigations and reports on behalf of other agencies or  
25 persons designated by the courts of this state or another state.

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

1 order an appropriate investigation to assist it in determining whether  
2 the adoption is in the best interest of the persons involved.

3 Sec. 20.15.110. REQUIRED RESIDENCE OF MINOR. A final decree of  
4 adoption may not be issued until the minor to be adopted, other than  
5 a stepchild of the petitioner, has lived in the adoptive home and the  
6 department or any other qualified agency or person designated by the  
7 court has had an opportunity to observe or investigate the adoptive  
8 home. This observation or investigation is not required in proceedings  
9 where an investigation is not required under sec. 100(e) and (g) of  
10 this chapter.

11 Sec. 20.15.120. HEARING. (a) The presence of the petitioner  
12 and the person to be adopted is not required at the hearing on the  
13 petition unless ordered by the court.

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

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

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

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

29 (1) except with respect to a spouse of the petitioner and

1 relatives of the spouse, to relieve the natural parents of the adopted  
2 person of all parental rights and responsibilities, and to terminate  
3 all legal relationships between the adopted person and his relatives,  
4 including his natural parents, so that the adopted person thereafter  
5 is a stranger to his former relatives for all purposes including  
6 inheritance, unless the decree of adoption specifically provides for  
7 continuation of inheritance rights, and the interpretation or construc-  
8 tion of documents, statutes, and instruments, whether executed before  
9 or after the adoption is decreed, which do not expressly include the  
10 person by name or by some designation not based on a parent and child  
11 or blood 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 instru-  
16 ments, whether executed before or after the adoption is decreed, which  
17 do not expressly exclude an adopted person from their operation or  
18 effect.

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

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

28 (b) Subject to the disposition of an appeal, upon the expiration  
29 of one year after an adoption decree is issued, the decree may not be

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

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

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

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

25 Sec. 20.15.160. RECOGNITION OF FOREIGN DECREE AFFECTING ADOPTION.  
26 A decree of court terminating the relationship of parent and child or  
27 establishing the relationship by adoption issued under due process of  
28 law by a court of any other jurisdiction within or outside of the United  
29 States shall be recognized in this state and the rights and obligations

1 of the parties as to matters within the jurisdiction of this state  
2 shall be determined as though the decree were issued by a court of  
3 this state.

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

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

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

22 (1) in the presence of a representative of an agency taking  
23 custody of the child, whether the agency is within or outside of the  
24 state or in the presence and with the approval of a court within or  
25 outside of this state in which the minor was present or in which the  
26 parent resided at the time it was signed, which relinquishment may be  
27 withdrawn within 10 days after it is signed or the child is born,  
28 whichever is later; and the relinquishment is invalid unless it states  
29 that the parent has this right of withdrawal; or

1 (2) in any other situation if the petitioner has had custody  
2 of the minor for two years, but only if notice of the adoption proceed-  
3 ing has been given to the parent and the court finds, after considering  
4 the circumstances of the relinquishment and the long continued custody  
5 by the petitioner, that the best interest of the child requires the  
6 granting of adoption.

7 (c) The relationship of parent and child may be terminated by a  
8 court order issued in connection with an adoption proceeding under this  
9 chapter or a proceeding under AS 47.10, on the grounds specified in  
10 AS 47.10.080(c)(3), or if, in the case of a parent not having custody of  
11 a minor, his consent is being unreasonably withheld contrary to the  
12 best interest of the minor.

13 (d) For the purpose of proceeding under this chapter, a decree  
14 terminating all rights of a parent with reference to a child or the  
15 relationship of parent and child issued by a court of competent juris-  
16 diction in this or any other state dispenses with the consent to  
17 adoption proceedings of a parent whose rights or parent and child  
18 relationship are terminated by the decree and with any required notice  
19 of an adoption proceeding other than as provided in this section.

20 (e) A petition for termination of the relationship of parent  
21 and child made in connection with an adoption proceeding may be made  
22 by

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

25 (2) the petitioner for adoption, the guardian of the person,  
26 the legal custodian of the child, or the individual standing in  
27 parental relationship to the child;

28 (3) an agency; or

29 (4) any other person having a legitimate interest in the

1 matter.

2 (f) Before the petition is heard, notice of the hearing on the  
3 petition and opportunity to be heard shall be given the parents of the  
4 child, the guardian of the person of the child, the person having legal  
5 custody of the child, and, in the discretion of the court, a person  
6 appointed to represent any party.

7 (g) Notwithstanding the provisions of (b) of this section, a  
8 relinquishment of parental rights with respect to a child, executed under  
9 this section, may be withdrawn by the parent, and a decree of a court  
10 terminating the parent and child relationship under this section may be  
11 vacated by the court upon motion of the parent, if the child is not on  
12 placement for adoption and the person having custody of the child con-  
13 sents in writing to the withdrawal or vacation of the decree.

14 Sec. 20.15.190. ADOPTION ASSISTANCE. A handicapped minor in the  
15 permanent custody of the department in a foster home for not less than  
16 one year may not be denied the opportunity for a permanent home if the  
17 achievement of this depends on continued subsidy by the state.

18 Sec. 20.15.200. INVESTIGATION. Persons who are caring for a  
19 handicapped minor on a foster parent basis and who have applied to adopt  
20 the minor and to receive payments for the care and support of the handi-  
21 capped minor shall be evaluated as to their suitability as adoptive  
22 parents by means of an adoptive home study. This home study shall be  
23 made by the commissioner's adoption staff or on his behalf by an auth-  
24 orized agency which provides adoption services.

25 Sec. 20.15.210. AMOUNT AND DURATION OF SUBSIDY PAYMENTS. The  
26 monthly payment and the length of time for which a subsidy for a handi-  
27 capped child is granted are left to the discretion of the commissioner  
28 and may vary from a small monthly sum to an amount not exceeding the  
29 existing rate for foster care until the child reaches the age of majority,

1 if the need continues to exist. Subsidies shall be paid from the same  
2 public funds and in the same manner as foster care payments.

3 Sec. 20.15.220. ANNUAL REEVALUATION. After an adoption, with  
4 subsidy, is final, the family is independent of the department except  
5 for an annual evaluation by the department of the need for continued  
6 subsidy and the amount of the subsidy.

7 Sec. 20.15.230. REGULATIONS. The department shall promulgate  
8 regulations necessary to implement the provisions of secs. 190 - 240 of  
9 this chapter.

10 Sec. 20.15.240. DEFINITIONS. In this chapter, unless the context  
11 otherwise requires,

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

14 (2) "agency" means any person certified, licensed, or other-  
15 wise specially empowered by law or regulation to place minors for  
16 adoption;

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

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

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

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

26 (7) "handicapped" shall mean a state at the time of adoption  
27 in which the child differs markedly from his or her peers because of  
28 a physical or mental defect.

29 (8) "minor" means a person who has not reached the age of

1 majority.

2 \* Sec. 2. AS 20.10 is repealed.

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