

SENATE BILL NO. 276

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR HALFORD

Introduced: 5/3/91
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act providing that notice of an adoption proceeding need not be sent to a putative
2 father who has not legitimated the child before commencement of the proceeding, with
3 limited exceptions; allowing an acknowledgement of parenthood to be filed before or after
4 the birth of a child; and relating to consent for adoption."

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

6 * Section 1. AS 25.20.050(a) is amended to read:

7 (a) A child born out of wedlock is legitimated and considered the heir of the putative
8 parent when (1) the putative parent subsequently marries the undisputed parent of the child; (2)
9 the putative parent acknowledges, in writing, being a parent of the child; the acknowledgement
10 may be filed under (b) of this section either before or after the birth of the child; or (3) the
11 putative parent is judged by a superior court, upon sufficient evidence, to be a parent of the child.
12 Acceptable evidence includes, but is not limited to, evidence that the putative parent's conduct
13 and bearing toward the child, either by word or act, indicates that the child is the child of the
14 putative parent. That conduct may be construed by the court to constitute evidence of parentage.

1 When indefinite, ambiguous, or uncertain terms are used, the court may use extrinsic evidence
2 to show the putative parent's intent.

3 * Sec. 2. AS 25.23.005 is amended to read:

4 Sec. 25.23.005. CONSTRUCTION OF CHAPTER; RIGHTS OF PERSONS AFFECTED
5 BY ADOPTION. This chapter shall be liberally construed to the end that the best interests of
6 adopted children are promoted. Due regard shall be given to the rights of all persons affected
7 by a child's adoption. However, a putative father has the primary responsibility to protect
8 the putative father's rights through legitimation of the child under AS 25.20.050.

9 * Sec. 3. AS 25.23.040(a) is amended to read:

10 (a) Unless consent is not required under AS 25.23.050, a petition to adopt a minor may
11 be granted only if written consent to a particular adoption has been executed by

12 (1) the mother of the minor;

13 (2) the father of the minor, if

14 (A) the father was married to the mother at the time the minor was
15 conceived or at any time after conception;

16 (B) [,] the minor is the father's child by adoption; [, OR]

17 (C) before the effective date of the mother's relinquishment of
18 parental rights, the father has otherwise legitimated the minor under the laws of the
19 state; for purposes of this subparagraph, a father is not considered to have
20 legitimated a child through a written acknowledgement under AS 25.20.050(a)(2)
21 unless the writing is filed with the Bureau of Vital Statistics before the effective date
22 of the mother's relinquishment of parental rights and the writing includes the
23 father's address, phone number, and date of birth; if the minor's mother is dead or
24 has no right to give or withhold consent to the adoption, the date by which a
25 putative father must legitimate the minor in order to have the right to give or
26 withhold consent under this subparagraph is the date on which a petition for
27 adoption of the minor was filed; or

28 (D) the father was judged to be the parent of the child in an action
29 under AS 25.20.050(a)(3) that commenced before the effective date of the mother's
30 relinquishment of parental rights; the court may not grant a petition for adoption
31 of a child before a paternity action relating to the child is concluded under

1 AS 25.20.050(a)(3) if the paternity action commenced before the effective date of the
2 mother's relinquishment of parental rights; if the minor's mother is dead or has no
3 right to give or withhold consent to the adoption, the date by which a paternity
4 action must have commenced under this subparagraph is the date on which a
5 petition for adoption of the minor was filed:

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

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

9 (5) the minor, if 10 years of age or older, unless the court in the best interest of
10 the minor dispenses with the minor's consent; and

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

12 * Sec. 4. AS 25.23.050(a) is amended to read:

13 (a) Consent to adoption is not required of

14 (1) for purposes of this section, a legal parent who has abandoned a child for a
15 period of at least six months;

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

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

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

22 (3) the father of a minor if the father's consent is not required by
23 AS 25.23.040(a)(2);

24 (4) a parent who has relinquished the right to consent under AS 25.23.180;

25 (5) a parent whose parental rights have been terminated by order of the court
26 under AS 25.23.180(c)(3) or AS 47.10.080(c)(3);

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

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

31 (8) a guardian or custodian specified in AS 25.23.040(a)(3) or (4) who has failed

1 to respond in writing to a request for consent for a period of 60 days or who, after examination
2 of the guardian's or custodian's written reasons for withholding consent, is found by the court
3 to be withholding consent unreasonably; or

4 (9) the spouse of the person to be adopted, if the requirement of consent to the
5 adoption is waived by the court by reason of prolonged unexplained absence, unavailability,
6 incapacity, or circumstances constituting an unreasonable withholding of consent.

7 * Sec. 5. AS 25.23.050 is amended by adding a new subsection to read:

8 (c) In this section, "legal parent" means a parent by adoption, a parent of a child born
9 in wedlock, the mother of a child born out of wedlock, or the father of a child born out of
10 wedlock who has legitimated the child under AS 25.20.050(a) or a comparable law in another
11 jurisdiction. For purposes of this subsection, a father is not considered to have legitimated a
12 child through a written acknowledgement under AS 24.20.050(a)(2) unless the writing was filed
13 with the Bureau of Vital Statistics before the effective date of the mother's relinquishment of
14 parental rights and the writing included the father's address, phone number, and date of birth.
15 If the minor's mother is dead or has no right to give or withhold consent to the adoption, the date
16 by which a writing must be filed for purposes of this subsection is the date on which the petition
17 for adoption was filed.

18 * Sec. 6. AS 25.23.100(a) is amended to read:

19 (a) After the filing of a petition to adopt a minor, the court shall fix a time and place for
20 hearing the petition. At least 20 days before the date of hearing, the petitioner shall give notice
21 of the filing of the petition and of the time and place of hearing to

22 (1) the department, unless the adoption is by a stepparent of the child; the notice
23 to the department must be accompanied by a copy of the petition;

24 (2) any agency or person whose consent to the adoption is required by this
25 chapter, but who has not consented; [AND]

26 (3) a person whose consent is dispensed with upon any ground mentioned in
27 AS 25.23.050(a)(1), (2), [(3),] (6), (7), (8) and (9), but who has not consented; and

28 (4) a putative father whose consent is dispensed with under
29 AS 25.23.050(a)(3) who the petitioner knows, or by the exercise of ordinary diligence should
30 know,

31 (A) resided with the child at any time during the 60 days immediately

1 preceding the filing of the petition or at any time since the child's birth if the child
2 was less than 60 days old when the petition was filed; or

3 (B) repeatedly has contributed or tried to contribute to the support
4 of the child during the year immediately preceding the filing of the petition or
5 during the period since the child's birth if the child was less than one year old when
6 the petition was filed [. THE NOTICE TO THE DEPARTMENT SHALL BE
7 ACCOMPANIED BY A COPY OF THE PETITION].

8 * Sec. 7. AS 25.23.100 is amended by adding new subsections to read:

9 (k) A verified statement of the mother of the child or of the petitioner, or an affidavit
10 of another person with knowledge of the facts, filed in an adoption proceeding and asserting that
11 the child has not resided with the putative father as described in (a)(4)(A) of this section and that
12 the putative father has not contributed or tried to contribute to the support of the child as
13 described in (a)(4)(B) of this section is sufficient proof to enable the court to grant the relief
14 sought without notice to the putative father unless notice is required under another provision of
15 (a) of this section.

16 (l) Notice under (a)(4) of this section is not required if the man was a party to a paternity
17 proceeding under AS 25.23.050(a) or a comparable law in another jurisdiction relating to the
18 child proposed for adoption that was dismissed or resulted in a finding that the man was not the
19 father of the child who is the subject of the adoption petition.

20 * Sec. 8. AS 25.23.140(a) is amended to read:

21 (a) An appeal from any final order or decree rendered under this chapter may be taken
22 in the manner and time provided for appeal from a judgment in a civil action. **However, lack**
23 **of notice of the adoption proceeding to a putative father may not be used to set aside a**
24 **decree of adoption under this chapter unless the putative father establishes within one year**
25 **after the entry of the final decree fraud on the part of a petitioner in the proceeding with**
26 **respect to information required in the proceeding about the putative father.**

27 * Sec. 9. The amendments in secs. 2 - 8 of this Act apply to adoption proceedings for which a
28 petition is filed on or after the effective date of this Act.