



# LAWS OF ALASKA

1974

Source

SCSHB 70 am S

Chapter No.

84

## AN ACT

Relating to the adoption of children.

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

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

#### CHAPTER 15. ADOPTION.

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

Sec. 20.15.020. WHO MAY ADOPT. (a) The following persons may adopt:

- (1) a husband and wife together;
- (2) an unmarried adult;
- (3) the unmarried father or mother of the person to be adopted;
- (4) a married person without the other spouse joining as a petitioner, if the person to be adopted is not his spouse, and if

(A) the other spouse is a parent of the person to be adopted and consents to the adoption; or

(B) the petitioner and the other spouse are legally separated; or

(C) the failure of the other spouse to join in the petition or to agree to the adoption is excused by the court by reason of prolonged unexplained absence,

unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

(b) Nothing in this section affects legitimation under AS 25.20.050.

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

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

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

(1) the mother of the minor;

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

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

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

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

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

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse or by the guardian or conservator of an incapacitated adult.

Sec. 20.15.050. PERSONS AS TO WHOM CONSENT AND NOTICE NOT REQUIRED. (a) Consent to adoption is not required of

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

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

limited to indigency,

(A) to communicate meaningfully with the child, or

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20.15.080. PETITION FOR ADOPTION. (a) The caption of a petition for adoption shall be styled substantially "In the Matter of the Adoption of .....". The person to be adopted shall be designated in the caption under the name by which he is to be known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known may not be disclosed in the petition or in the decree of adoption.

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

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

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

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

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

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

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

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

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

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

Sec. 20.15.090. REPORT OF PETITIONER'S EXPENDITURES.

(a) Except as specified in (b) of this section, the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report

in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The report shall show any expenses incurred in connection with

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

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

(c) Any report made under this section must be signed and verified by the petitioner.

Sec. 20.15.100. NOTICE OF PETITION, INVESTIGATION AND HEARING. (a) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least 20 days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to (1) the department; (2) any agency or person whose consent to the adoption is required by this chapter, but who has not consented; and (3) a person whose consent is dispensed with upon any ground mentioned in sec. 50(a)(1), (2), (3), (6), (7), (8) and (9) of this chapter, but who has not consented. The notice to the department shall be accompanied by a copy of the petition.

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

(c) A reasonable investigation shall be made by the department or the petitioner to assure that all persons listed in (a) of this section are located and given notice of the proposed adoption. The investigation shall be conducted so that the rights of all parties are protected, including but not limited to the right to privacy and the

right to be notified. An affidavit describing the investigation shall be filed with the court if all persons listed in (a) of this section are not located.

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

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

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

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

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

(i) After the filing of a petition to adopt an adult the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required, but who has not consented. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the persons involved.

Sec. 20.15.110. REQUIRED RESIDENCE OF MINOR. A final decree of adoption may not be issued until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home and the department or any other qualified agency or person designated by the court has had an opportunity to observe or investigate the adoptive home.

This observation or investigation is not required in proceedings where an investigation is not required under sec. 100(e) and (g) of this chapter.

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

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

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

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

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

(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships between the adopted person and his relatives, including his natural parents, so that the adopted person thereafter is a stranger to his former relatives for all purposes including inheritance, unless the decree of adoption specifically provides for continuation of inheritance rights, and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the person by name or by some designation not based on a parent and child or blood relationship; and

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

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

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

(b) Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued, the decree may not be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor, or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period.

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

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

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

Sec. 20.15.160. RECOGNITION OF FOREIGN DECREE AFFECTING ADOPTION. A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued under due process of law by a court of any other jurisdiction within or outside of the United States shall be recognized in this state and the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree were issued by a court of this state.

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

Sec. 20.15.180. RELINQUISHMENT AND TERMINATION OF PARENT AND CHILD RELATIONSHIPS. (a) The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child

terminated in or before an adoption proceeding as provided in this section.

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

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

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

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

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

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

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

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

(3) an agency; or

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

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

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

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

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

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

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

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

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

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

(2) "agency" means any person certified, licensed, or otherwise specially empowered by law or regulation to place minors for 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) "handicapped" means a state at the time of adoption in which the child differs markedly from his or her peers because of a physical or mental defect;

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

\* Sec. 2. AS 20.10 is repealed.