

HOUSE BILL No. 4249

February 15, 2011, Introduced by Reps. Irwin, Brown, Bauer, Rutledge, Switalski, Lipton, Ananich, McCann, Hammel, Townsend, Liss and Meadows and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 24, 41, and 51 of chapter X (MCL 710.24,
710.41, and 710.51), section 24 as amended by 2004 PA 487, section
41 as amended by 1994 PA 222, and section 51 as amended by 1996 PA
409.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

Sec. 24. (1) ~~If a~~ **A** person **WHO** desires to adopt a child or an
adult and to bestow upon the adoptee his or her family name, or to
adopt a child or an adult without a name change, with the intent to
make the adoptee his or her heir, ~~that person, together with his~~
~~wife or her husband, if married,~~ shall file a petition with the
court. ~~of~~ **IF THE PETITIONER IS MARRIED, THE PETITIONER'S HUSBAND OR**
WIFE MUST JOIN IN THE PETITION. TWO UNMARRIED PERSONS MAY PETITION

1 TO ADOPT A CHILD BY FILING A PETITION UNDER THIS SECTION.

2 (2) THE PETITION SHALL BE FILED IN the county in which the
3 petitioner resides or where the adoptee is found. ~~or, if~~ IF the
4 petitioner and adoptee reside out of state, THE PETITION SHALL BE
5 FILED where the parent's parental rights were terminated or are
6 pending termination. If both parents' parental rights were
7 terminated at different times and in different courts, a-~~THE~~
8 petition filed under this section shall be filed in the court of
9 the county where parental rights were first terminated. If there
10 has been a temporary placement of the child, the petition for
11 adoption shall be filed with the court that received the report
12 described in section 23d(2) of this chapter.

13 (3) ~~(2)~~—In an adoption proceeding in which there is more than
14 1 applicant, the petition for adoption shall be filed with the
15 court of the county where the parent's parental rights were
16 terminated or are pending termination. If both parents' parental
17 rights were terminated at different times and in different courts,
18 a petition filed under this section shall be filed in the court of
19 the county where parental rights were first terminated.

20 (4) ~~(3)~~—If a petition to adopt is filed in a county other than
21 that in which the petitioner resides or the prospective adoptee is
22 found, the chief judge of the court may, upon motion, enter an
23 order transferring jurisdiction of the matter to the court of the
24 county in which the petitioner resides or the prospective adoptee
25 is found.

26 (5) ~~(4)~~—The petition for adoption shall be verified by each
27 petitioner and shall contain the following information:

1 (a) The name, date and place of birth, and place of residence
2 of each petitioner, including the maiden name **OR FORMER NAMES** of
3 the adopting ~~mother~~**PETITIONER**.

4 (b) Except as otherwise provided in subsection ~~(7)~~**(8)**, the
5 name, date and place of birth, and place of residence if known of
6 the adoptee.

7 (c) The relationship, if any, of the adoptee to the
8 petitioner.

9 (d) The full name by which the adoptee shall be known after
10 adoption.

11 (e) The full description of the property, if any, of the
12 adoptee.

13 (f) Unless the rights of the parents have been terminated by a
14 court of competent jurisdiction or except as otherwise provided in
15 subsection ~~(7)~~**(8)**, the names of the parents of the adoptee and the
16 place of residence of each living parent if known.

17 (g) Except as otherwise provided in subsection ~~(7)~~**(8)**, the
18 name and place of residence of the guardian of the person or estate
19 of the adoptee, if any has been appointed.

20 **(6)** ~~(5)~~In a direct placement, the petitioner shall attach to
21 the petition a verified statement certifying that the petitioner
22 has been informed of the availability of counseling services and
23 whether the petitioner has received counseling.

24 **(7)** ~~(6)~~Except as otherwise provided in this subsection, in a
25 direct placement, the petitioner shall attach a copy of a
26 preplacement assessment of the petitioner completed or updated
27 within 1 year before the petition is filed with a finding that the

petitioner is suitable to be a parent of an adoptee, copies of all other preplacement assessments of the petitioner, if any others have been completed, and a verified statement stating that no preplacement assessments of the petitioner have been completed other than those attached to the petition and explaining any preplacement assessments of the petitioner that have been initiated but not completed. If the petitioner is seeking review of a preplacement assessment under section ~~23f(8)~~ **23F(9)** of this chapter, the petitioner may comply with this subsection by attaching a copy of that preplacement assessment and a copy of the application for review, together with copies of all other preplacement assessments and the verified statement required by this section.

(8) ~~(7)~~—In a direct placement in which the parties have elected not to exchange identifying information, the information required by subsection ~~(4)(f)~~ **(5) (F)** and (g) and the surname and place of residence of the adoptee required under subsection ~~(4)(b)~~ **(5) (B)** may be omitted. The attorney or child placing agency assisting in the adoption shall file a verified statement containing the omitted information.

Sec. 41. (1) Except as provided in section 23d of this chapter, a child shall not be placed in a home for the purpose of adoption until an order terminating parental rights has been entered ~~pursuant to~~ **UNDER** this chapter or chapter XIIIA and the court has formally approved placement under section 51 of this chapter. After an order terminating parental rights has been entered, the court shall enter any appropriate orders ~~pursuant~~

1 **ACCORDING** to sections 45, 46, and 51 of this chapter. Such orders
2 shall not be withheld because the period specified for a rehearing
3 or an appeal as of right has not expired, or because of the
4 pendency of any rehearing or appeal as of right.

5 (2) If an order terminating parental rights is entered
6 ~~pursuant to~~ **UNDER** this chapter or chapter XIIIA, the child may be
7 placed in a home for the purpose of adoption during the period
8 specified for a rehearing or an appeal as of right and the period
9 during which a rehearing or appeal as of right is pending. When a
10 child placing agency, the court, or the department formally places
11 a child or the court approves placement of a child ~~pursuant~~
12 **ACCORDING** to this subsection, the child placing agency, court, or
13 department shall inform the person or persons in whose home the
14 child is placed that an adoption will not be ordered until 1 of the
15 following occurs:

16 (a) The petition for rehearing is granted, at the rehearing
17 the order terminating parental rights is not modified or set aside,
18 and subsequently the period for appeal as of right to the court of
19 appeals has expired without an appeal being filed.

20 (b) The petition for rehearing is denied and the period for
21 appeal as of right to the court of appeals has expired without an
22 appeal being filed.

23 (c) There is a decision of the court of appeals affirming the
24 order terminating parental rights.

25 (3) This section ~~shall~~ **DOES** not ~~be construed to~~ prevent a
26 child residing in a licensed foster home from being adopted by the
27 foster parent or parents.

1 (4) This section does not apply if the petitioner for adoption
2 is married to **OR HAS JOINED IN AN ADOPTION PETITION WITH** a parent
3 having legal custody of the child.

4 Sec. 51. (1) Not later than 14 days after receipt of the
5 report of investigation, except as provided in subsections (2) and
6 (5), the judge shall examine the report and shall enter an order
7 terminating the rights of the child's parent or parents, if there
8 was a parental consent, or the rights of any person in loco
9 parentis, if there was a consent by other than parents, and approve
10 placement of the child with the petitioner if the judge is
11 satisfied as to both of the following:

12 (a) The genuineness of consent to the adoption and the legal
13 authority of the person or persons signing the consent.

14 (b) The best interests of the adoptee will be served by the
15 adoption.

16 (2) If it is necessary to hold a hearing before entering an
17 order terminating the rights of a parent, parents, or a person in
18 loco parentis, or if other good cause is shown, the time specified
19 in subsection (1) shall be extended for an additional 14-day
20 period.

21 (3) Upon entry of an order terminating rights of parents or
22 persons in loco parentis, a child is a ward of the court and a
23 consent to adoption executed ~~pursuant to~~ **UNDER** section 43 of this
24 chapter shall not be withdrawn after the order is entered. Entry of
25 the order terminates the jurisdiction of the same court or another
26 court over the child in a divorce or separate maintenance action.
27 If the petitioner for adoption is married to ~~the parent having~~

~~legal custody of the child~~ **OR HAS JOINED IN AN ADOPTION PETITION**

WITH THE PARENT HAVING LEGAL CUSTODY OF THE CHILD, the child shall not be made a ward of the court after termination of the rights of the other parent.

(4) Without making the child a ward of the court, the court may approve placement of a child if the child is placed for adoption in this state by a public or licensed private agency of another state or country and if the law of the sending state or country prohibits the giving of consent to adoption at the time of placement. Before placement of the child in that instance, the sending agency shall tender evidence as the court requires to demonstrate that the agency possesses the necessary authority to consent to the adoption at the time of entry of the final order of adoption. After the sending agency has given evidence of its ability to consent, the agency shall not do anything to jeopardize its ability to grant the required consent before entry of the final order of adoption. After the sending agency gives its consent for the adoption, that consent shall not be withdrawn.

(5) If a parent having legal custody of the child is married to ~~the petitioner for adoption~~ **OR HAS JOINED IN AN ADOPTION**

PETITION WITH THE PETITIONER, the judge shall not enter an order terminating the rights of that parent.

(6) If the parents of a child are divorced, or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in section 39(2) of this chapter, and if the parent having legal custody of the child subsequently marries and that ~~parent's~~ **PERSON'S** spouse petitions to

1 adopt the child **OR THE PERSON HAVING LEGAL CUSTODY PETITIONS FOR**
2 **ADOPTION UNDER SECTION 24(1) OF THIS CHAPTER**, the court upon notice
3 and hearing may issue an order terminating the rights of the other
4 parent if both of the following occur:

5 (a) The other parent, having the ability to support, or assist
6 in supporting, the child, has failed or neglected to provide
7 regular and substantial support for the child or if a support order
8 has been entered, has failed to substantially comply with the
9 order, for a period of 2 years or more before the filing of the
10 petition.

11 (b) The other parent, having the ability to visit, contact, or
12 communicate with the child, has regularly and substantially failed
13 or neglected to do so for a period of 2 years or more before the
14 filing of the petition.

15 (7) Unless otherwise ordered by the court, the prospective
16 adoptive parents with whom a child is placed ~~pursuant~~ **ACCORDING** to
17 a court order approving placement under this section may consent to
18 all medical, surgical, psychological, educational, and related
19 services for the child.