

# HOUSE BILL No. 5750

May 10, 1990, Introduced by Rep. Stupak and referred to the Committee on Judiciary.

A bill to amend sections 22, 24, 43, and 51 of chapter X of Act No. 288 of the Public Acts of 1939, entitled as amended

"An act to revise and consolidate the statutes relating to certain aspects of the organization and jurisdiction of the probate court of this state, the powers and duties of such court and the judges and other officers thereof, certain aspects of the statutes of descent and distribution of property, and the statutes governing the change of name of adults and children, the adoption of adults and children, and the jurisdiction of the juvenile division of the probate court; to prescribe the powers and duties of the juvenile division of the probate court, and the judges and other officers thereof; to prescribe the manner and time within which actions and proceedings may be brought in the juvenile division of the probate court; to prescribe pleading, evidence, practice, and procedure in actions and proceedings in the juvenile division of the probate court; to provide for appeals from the juvenile division of the probate court; to prescribe the powers and duties of certain state departments, agencies, and officers; and to provide remedies and penalties for the violation of this act,"

sections 22, 43, and 51 as amended by Act No. 72 of the Public Acts of 1982, being sections 710.22, 710.24, 710.43, and 710.51

of the Michigan Compiled Laws; and to add section 24b to chapter X.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1. Sections 22, 24, 43, and 51 of chapter X of Act  
2 No. 288 of the Public Acts of 1939, sections 22, 43, and 51 as  
3 amended by Act No. 72 of the Public Acts of 1982, being sections  
4 710.22, 710.24, 710.43, and 710.51 of the Michigan Compiled Laws,  
5 are amended and section 24b is added to chapter X to read as  
6 follows:

7                                   CHAPTER X

8       Sec. 22. As used in this chapter:

9       (a) "Adoptee" means the person who is to be adopted, regard-  
10 less of whether the person is a child or an adult. FOR THE PUR-  
11 POSE OF PROCESSING A PETITION FOR ADOPTION UNDER SECTION 24B OF  
12 THIS CHAPTER, ADOPTEE INCLUDES THE EXPECTED CHILD WHO IS TO BE  
13 ADOPTED.

14       (b) "Best interests of the adoptee" or "best interests of  
15 the child" means the sum total of the following factors to be  
16 considered, evaluated, and determined by the court to be applied  
17 to give the adoptee permanence at the earliest possible date:

18       (i) The love, affection, and other emotional ties existing  
19 between the adopting person or persons or the putative father,  
20 and the adoptee.

21       (ii) The capacity and disposition of the adopting person or  
22 persons or the putative father to give the adoptee love, affec-  
23 tion, and guidance, and to educate and create a milieu that

1 fosters the religion, racial identity, and culture of the  
2 adoptee.

3 (iii) The capacity and disposition of the adopting person or  
4 persons or the putative father to provide the adoptee with food,  
5 clothing, education, permanence, medical care or other remedial  
6 care recognized and permitted under the laws of this state in  
7 place of medical care, and other material needs.

8 (iv) The length of time the adoptee has lived in a stable,  
9 satisfactory environment, and the desirability of maintaining  
10 continuity.

11 (v) The permanence as a family unit of the proposed adoptive  
12 home, or the home of the putative father.

13 (vi) The moral fitness of the adopting person or persons or  
14 of the putative father.

15 (vii) The mental and physical health of the adopting person  
16 or persons or of the putative father, and of the adoptee.

17 (viii) The home, school, and community record of the  
18 adoptee.

19 (ix) The reasonable preference of the adoptee, if the  
20 adoptee is 14 years of age or less and if the court deems the  
21 adoptee to be of sufficient age to express a preference.

22 (x) The ability and willingness of the adopting person or  
23 persons to adopt the adoptee's siblings.

24 (xi) Any other factor considered by the court to be relevant  
25 to a particular adoption proceeding, or to a putative father's  
26 request for child custody.

1 (c) "Biological parent" means a person whose rights were  
2 terminated pursuant to this chapter or chapter XIIIA.

3 (d) "Born out of wedlock" means a child begotten and born to  
4 a woman who was not married from the conception to the date of  
5 birth of the child, or a child which the court has determined to  
6 be a child born during a marriage but not the issue of that  
7 marriage.

8 (e) "Child" means a person less than 18 years of age.

9 (f) "Child placing agency" means a private organization  
10 licensed to place children for adoption.

11 (g) "Consent" means a duly executed document in which all  
12 parental rights over a specific child are voluntarily relin-  
13 quished to the court for adoptive placement with the petitioner.

14 (h) "Court" means the probate court of this state, and when  
15 the context requires, the court having jurisdiction over adoption  
16 in another state or country.

17 (i) "Department" means the state department of social  
18 services.

19 (j) "Petitioner" means the person or persons who file an  
20 adoption petition with the court.

21 (k) "Release" means a duly executed document in which all  
22 parental rights over a specific child are voluntarily relin-  
23 quished to the department or to a child placing agency.

24 (l) "Stepparent" means a person who adopts a child 1 of  
25 whose parents is the adopting person's spouse.

26 Sec. 24. (1) ~~if~~ EXCEPT AS OTHERWISE PROVIDED IN  
27 SECTION 24B, IF a person desires to adopt a child or an adult and

1 to bestow upon the adoptee his family name, or to adopt a child  
2 or an adult without a change of name, with the intent to make the  
3 adoptee his heir, that person, together with his wife or her hus-  
4 band, if married, shall file a petition with the probate court of  
5 the county in which the petitioner resides or where the adoptee  
6 is found.

7 (2) The petition for adoption shall be verified by each  
8 petitioner and shall contain the following information:

9 (a) The name, date and place of birth, and place of resi-  
10 dence of each petitioner, including the maiden name of the adopt-  
11 ing mother.

12 (b) The name, date and place of birth, and place of resi-  
13 dence if known of the adoptee.

14 (c) The relationship, if any, of the adoptee to the  
15 petitioner.

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

18 (e) The full description of the property, if any, of the  
19 adoptee.

20 (f) The names of the parents of the adoptee, and the address  
21 of each living parent if known, except that the names and  
22 addresses of the parents may be omitted if the rights of the par-  
23 ents have been terminated by a court of competent jurisdiction.

24 (g) The name and address of the guardian of the person or  
25 estate of the adoptee, if any has been appointed.

26 SEC. 24B. (1) INSTEAD OF FILING A PETITION UNDER SECTION 24  
27 OF THIS CHAPTER, A PERSON MAY ELECT TO FILE A PETITION UNDER THIS

1 SECTION TO ADOPT A CHILD OR ADOPT AN EXPECTED CHILD AFTER BIRTH  
2 IF BOTH OF THE FOLLOWING APPLY:

3 (A) THE PERSON DESIRES TO ADOPT THE CHILD, AND THE CHILD IS  
4 NOT RELATED TO THAT PERSON WITHIN THE FOURTH DEGREE OF AFFINITY  
5 OR CONSANGUINITY, WITH THE INTENT TO MAKE THAT CHILD HIS OR HER  
6 HEIR, OR THE PERSON DESIRES TO ADOPT THE EXPECTED CHILD AFTER  
7 BIRTH, AND THE EXPECTED CHILD AFTER BIRTH WILL NOT BE RELATED TO  
8 THAT PERSON WITHIN THE FOURTH DEGREE OF AFFINITY OR CONSANGUINI-  
9 TY, WITH THE INTENT TO MAKE THAT CHILD HIS OR HER HEIR.

10 (B) A PARENT WHO HAS CUSTODY OF THE CHILD DESIRES THE PERSON  
11 TO ADOPT THE CHILD, OR THE MOTHER OF THE EXPECTED CHILD DESIRES  
12 THE PERSON TO ADOPT THE EXPECTED CHILD AFTER BIRTH.

13 (2) THE PETITIONER AND HIS WIFE OR HER HUSBAND IF MARRIED  
14 SHALL FILE A PETITION FOR ADOPTION WITH THE PROBATE COURT OF THE  
15 COUNTY IN WHICH THE PETITIONER OR THE MOTHER OF THE EXPECTED  
16 CHILD RESIDES, OR WHERE THE ADOPTEE IS FOUND.

17 (3) A PETITION FOR ADOPTION UNDER THIS SECTION SHALL BE VER-  
18 IFIED BY THE FOLLOWING:

19 (A) EACH PETITIONER.

20 (B) A PARENT WHO HAS CUSTODY OF THE CHILD TO BE ADOPTED.

21 (C) IN THE CASE OF AN EXPECTED CHILD, THE MOTHER OF THE  
22 EXPECTED CHILD TO BE ADOPTED.

23 (4) A PETITION FOR ADOPTION UNDER THIS SECTION SHALL CONTAIN  
24 THE FOLLOWING INFORMATION:

25 (A) THE INFORMATION DESCRIBED IN SECTION 24(2)(A) TO (F) OF  
26 THIS CHAPTER. IF THE PETITION FOR ADOPTION IS FOR AN EXPECTED

1 CHILD, THE PETITION SHALL INCLUDE THE EXPECTED BIRTH DATE OF THE  
2 CHILD.

3 (B) THE NAME AND ADDRESS OF EACH PERSON OR ENTITY THAT  
4 SOLICITED, ASSISTED IN, NEGOTIATED, OR ARRANGED THE PROPOSED  
5 ADOPTIVE PLACEMENT OF THE CHILD OR EXPECTED CHILD.

6 (5) UPON RECEIPT OF A PETITION FOR ADOPTION UNDER THIS SEC-  
7 TION, THE COURT SHALL APPOINT A GUARDIAN AD LITEM TO REPRESENT  
8 THE INTERESTS OF THE CHILD OR EXPECTED CHILD TO BE ADOPTED. THE  
9 GUARDIAN AD LITEM SHALL CONDUCT AN INVESTIGATION AND SHALL FILE A  
10 REPORT OF THE INVESTIGATION AND RECOMMENDATIONS REGARDING THE  
11 PROPOSED ADOPTIVE PLACEMENT OF THE CHILD OR EXPECTED CHILD. THE  
12 GUARDIAN AD LITEM NEED NOT APPEAR PERSONALLY AT A HEARING REGARD-  
13 ING THE ADOPTION UNLESS DIRECTED BY THE COURT OR REQUESTED BY AN  
14 INTERESTED PARTY. IF THE GUARDIAN AD LITEM REFUSES OR NEGLECTS  
15 TO FILE HIS OR HER REPORT OF THE INVESTIGATION AND RECOMMENDA-  
16 TIONS, THE COURT MAY PROCEED AS THOUGH THE REPORT HAD BEEN  
17 FILED. THE GUARDIAN AD LITEM SHALL BE ALLOWED REASONABLE COMPEN-  
18 SATION AS ORDERED BY THE COURT, TO BE PAID BY THE PETITIONER.

19 (6) UPON THE REQUEST OF A PARENT WHO VERIFIED THE PETITION  
20 FOR ADOPTION PURSUANT TO THIS SECTION, THE COURT MAY ORDER THAT  
21 THE CHILD BE PLACED IN A FOSTER HOME LICENSED UNDER ACT NO. 116  
22 OF THE PUBLIC ACTS OF 1973, BEING SECTIONS 722.111 TO 722.128 OF  
23 THE MICHIGAN COMPILED LAWS, OTHER THAN THE HOME OF THE PETITIONER  
24 OR A RELATIVE OF THE PETITIONER.

25 (7) AS USED IN THIS SECTION, "CUSTODY" MEANS PHYSICAL CUS-  
26 TODY OF A CHILD BY THE CHILD'S PARENT THAT IS NOT IN VIOLATION OF  
27 A CUSTODY ORDER OF A COURT OF COMPETENT JURISDICTION, EXCLUDING

1 PHYSICAL CUSTODY DURING VISITATION PERIODS SUBJECT TO A COURT  
2 ORDER.

3       Sec. 43. (1) Subject to this section and sections 44 and 51  
4 of this chapter, consent to adoption of a child shall be  
5 executed:

6       (a) By each parent of a child to be adopted or the surviving  
7 parent, except under the following circumstances:

8       (i) The rights of the parent have been terminated by a court  
9 of competent jurisdiction.

10       (ii) The child has been released for the purpose of adoption  
11 to a child placing agency or to the department.

12       (iii) A guardian of the child has been appointed.

13       (iv) A guardian of a parent has been appointed.

14       (v) The child is not related to the petitioner within the  
15 fourth degree of affinity or consanguinity.

16       (vi) A parent having legal custody of the child is married  
17 to the petitioner.

18       (b) By the duly authorized representative of the department  
19 or of a child placing agency to whom the child has been per-  
20 manently committed by an order of the juvenile division of the  
21 probate court.

22       (c) By the juvenile division of the probate court having  
23 permanent custody of the child.

24       (d) By the duly authorized representative of the department  
25 or of a child placing agency to whom the child has been  
26 released.



1 (e) By the guardian of the child, if a guardian has been  
2 appointed.

3 (f) By the guardian of a parent.

4 (g) By the authorized representative of a child placing  
5 agency of another state or country which has authority to consent  
6 to adoption.

7 (2) If the child to be adopted is over 14 years of age, that  
8 child's consent shall be necessary before the court may enter an  
9 order of adoption.

10 (3) If the person to be adopted is an adult, that person's  
11 consent shall be necessary before the court may enter an order of  
12 adoption, but consent by any other person is not required.

13 (4) If the parent of the child to be adopted is an unemanci-  
14 pated minor, that parent's consent is not valid unless a parent,  
15 guardian, or guardian ad litem of that minor parent has also exe-  
16 cuted the consent.

17 (5) The guardian of the child to be adopted shall not exe-  
18 cute a consent to that child's adoption pursuant to subsection  
19 (1) unless the guardian has first obtained authority to execute  
20 the consent from the court which appointed the guardian.

21 (6) The guardian of a parent shall not execute a consent to  
22 the adoption of the parent's child pursuant to subsection (1)  
23 unless the guardian has first obtained authority to execute the  
24 consent from the court which appointed the guardian. The consent  
25 shall have the same effect as if the consent were executed by the  
26 parent.

1 (7) The parent of a child shall not execute a consent unless  
2 ~~the~~ 1 OF THE FOLLOWING APPLIES:

3 (A) THE petitioner is related to the child within the fourth  
4 degree of affinity or consanguinity.

5 (B) THE PETITION FOR ADOPTION IS UNDER SECTION 24B OF THIS  
6 CHAPTER.

7 (8) If the petitioner for adoption is married to the parent  
8 having legal custody of the child and that parent has joined the  
9 petitioner in filing the petition for adoption, that parent shall  
10 not execute a consent to the adoption. The consent of the parent  
11 who does not have legal custody of the child and whose parental  
12 rights have not been terminated shall be executed before the  
13 court may enter an order of adoption under section 56 of this  
14 chapter.

15 Sec. 51. (1) Not later than 14 days after receipt of the  
16 report of investigation PREPARED PURSUANT TO SECTION 46 OF THIS  
17 CHAPTER OR NOT LATER THAN 14 DAYS AFTER THE BIRTH OF THE CHILD IF  
18 THE PETITION FOR ADOPTION IS UNDER SECTION 24B OF THIS CHAPTER  
19 AND THE REPORT WAS FILED BEFORE THE BIRTH OF THE CHILD, WHICHEVER  
20 IS LATER, except as provided in subsections (2) and (5), the  
21 judge of probate shall examine ~~the~~ THAT report AND THE REPORT  
22 FILED BY THE GUARDIAN AD LITEM OF THE CHILD PURSUANT TO SECTION  
23 24B(5) OF THIS CHAPTER, IF APPLICABLE, and shall enter an order  
24 terminating the rights of the child's parent or parents, if there  
25 was a parental consent, or the rights of any person in loco par-  
26 entis, if there was a consent by other than parents, if the judge  
27 is satisfied as to both of the following:

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

3 (b) The best interests of the adoptee will be served by the  
4 adoption.

5 (2) If it is necessary to hold a hearing before entering an  
6 order terminating the rights of a parent, parents, or a person in  
7 loco parentis, or if other good cause is shown, the time speci-  
8 fied in subsection (1) shall be extended for an additional 14-day  
9 period.

10 (3) Upon entry of an order terminating rights of parents or  
11 persons in loco parentis, a child shall be a ward of the court  
12 and a consent to adoption executed pursuant to section 43 of this  
13 chapter shall not thereafter be withdrawn. Entry of the order  
14 shall terminate the jurisdiction of the circuit court over the  
15 child in a divorce or separate maintenance action. If the peti-  
16 tioner for adoption is married to the parent having legal custody  
17 of the child, the child shall not be made a ward of the court  
18 after termination of the rights of the other parent.

19 (4) Without making the child a ward of the court, the court  
20 may authorize placement of a child if the child is placed for  
21 adoption in this state by a public or licensed private agency of  
22 another state or country and if the law of the sending state or  
23 country prohibits the giving of consent to adoption at the time  
24 of placement. Before placement of the child in that instance,  
25 the sending agency shall tender evidence as the court requires to  
26 demonstrate that the agency possesses the necessary authority to  
27 consent to the adoption at the time of entry of the final order

1 of adoption. After the sending agency has given evidence of its  
2 ability to consent, the agency shall not do anything to jeopard-  
3 ize its ability to grant the required consent before entry of  
4 the final order of adoption. After the sending agency gives its  
5 consent for the adoption, that consent shall not be withdrawn.

6 (5) If a parent having legal custody of the child is married  
7 to the petitioner for adoption, the judge of probate shall not  
8 enter an order terminating the rights of that parent.

9 (6) If the parents of a child are divorced, or if the par-  
10 ents are unmarried but the father has acknowledged paternity or  
11 is a putative father who meets the conditions in section 39(2) of  
12 this chapter, and if the parent having legal custody of the child  
13 subsequently marries and that parent's spouse petitions to adopt  
14 the child, the court upon notice and hearing may issue an order  
15 terminating the rights of the other parent if both of the follow-  
16 ing occur:

17 (a) The other parent, having the ability to support, or  
18 assist in supporting, the child, has failed or neglected to pro-  
19 vide regular and substantial support for the child or if a sup-  
20 port order has been entered, has failed to substantially comply  
21 with the order, for a period of 2 years or more before the filing  
22 of the petition.

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

1       (7) Unless otherwise ordered by the court, the prospective  
2 adoptive parents with whom a child is placed pursuant to a court  
3 order under this section may consent to all medical, surgical,  
4 psychological, educational, and related services for the child.