

Act No. 247
Public Acts of 1992
Approved by the Governor
November 18, 1992
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STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992

Introduced by Reps. Bandstra, Gubow, Yokich, Perry Bullard, Wallace, Nye, DeMars, Dalman and Randall

ENROLLED HOUSE BILL No. 5761

AN ACT to amend sections 22, 24a, and 56 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," section 22 as amended by Act No. 175 of the Public Acts of 1990 and section 24a as added and section 56 as amended by Act No. 72 of the Public Acts of 1982, being sections 710.22, 710.24a, and 710.56 of the Michigan Compiled Laws; and to add section 66 to chapter X.

The People of the State of Michigan enact:

Section 1. Sections 22, 24a, and 56 of chapter X of Act No. 288 of the Public Acts of 1939, section 22 as amended by Act No. 175 of the Public Acts of 1990 and section 24a as added and section 56 as amended by Act No. 72 of the Public Acts of 1982, being sections 710.22, 710.24a, and 710.56 of the Michigan Compiled Laws, are amended and section 66 is added to chapter X to read as follows:

CHAPTER X

Sec. 22. As used in this chapter:

- (a) "Adoptee" means the person who is to be adopted, regardless of whether the person is a child or an adult.
- (b) "Best interests of the adoptee" or "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date:
 - (i) The love, affection, and other emotional ties existing between the adopting person or persons or the putative father, and the adoptee.
 - (ii) The capacity and disposition of the adopting person or persons or the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) "Release" means a duly executed document in which all parental rights over a specific child are voluntarily relinquished to the department or to a child placing agency.

(l) "Rescission petition" means a petition filed by an adult adoptee and his or her parent whose rights have been terminated to rescind the adoption in which a stepparent acquired parental rights and to restore parental rights of that parent pursuant to section 66.

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

(n) "Within the fifth degree by marriage, blood, or adoption" means any of the following relationships: parent, step-parent, grandparent, step-grandparent, brother, step-brother, sister, step-sister, uncle, step-uncle, aunt, step-aunt, first cousin, step-first cousin, great aunt, step-great aunt, great uncle, step-great uncle, great grandparent, step-great grandparent, first cousin once removed, step-first cousin once removed, great great grandparent, step-great great grandparent, great great uncle, step-great great uncle, great great aunt, step-great great aunt, great great great grandparent, or step-great great great grandparent.

Sec. 24a. (1) Interested parties in a petition for adoption are all of the following:

(a) The petitioner.

(b) The adoptee, if over 14 years of age.

(c) A minor parent, adult parent, or surviving parent of an adoptee, unless 1 or more of the following apply:

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

(ii) A guardian of the adoptee, with specific authority to consent to adoption, has been appointed.

(iii) A guardian of the parent, with specific authority to consent to adoption, has been appointed.

(iv) The rights of the parent have been released.

(v) The parent has consented to the granting of the petition.

(d) The department or a child placing agency to which the adoptee has been, or for purposes of subsection (3) is proposed to be, released or committed by an order of the juvenile division of the probate court.

(e) A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.

- (f) The juvenile division of the probate court with permanent custody of the adoptee.
 - (g) A court with continuing jurisdiction over the adoptee.
 - (h) A child placing agency of another state or country which has authority to consent to adoption.
 - (i) The guardian or guardian ad litem of an interested party.
- (2) Interested parties in a petition for a hearing to identify the father of a child and to determine or terminate his rights are all of the following:
- (a) The persons set forth in subsection (1).
 - (b) A putative father of the child.
- (3) Interested parties in a proceeding relating to the execution of a voluntary release are all of the following:
- (a) The adoptee, if over 5 years of age.
 - (b) The department or a child placing agency to which the adoptee is proposed to be released.
 - (c) The person executing the release of parental rights.
- (4) Interested parties in a rescission petition are all of the following:
- (a) The petitioners.
 - (b) The stepparent who adopted the adult adoptee.
 - (c) The spouse of the parent whose rights were terminated.
- (5) In the interest of justice, the court may require additional parties to be served.
- (6) The court shall not appoint a guardian of the adoptee or of a parent solely for the purpose of defeating that parent's status as an interested party under this section.

Sec. 56. (1) One year after the entry of an order terminating rights pursuant to this chapter, unless the court determines that circumstances have arisen which make adoption undesirable, the court may enter an order of adoption. Upon the motion of the petitioner, the court may waive the 1-year period, or any portion of that period, if the waiver is in the best interests of the adoptee. If, after a hearing, the court finds that the best interests of the adoptee will be served, it may extend the 1-year period for an additional period of time not exceeding 2 years from the time of placement for adoption. In an adoption proceeding for which an adoption order is not entered within 2 years after placement, the court shall hold a hearing and determine whether an order of adoption shall be entered or the petition denied. If a child is placed pursuant to section 41(2) of this chapter, the court may extend the 1-year period for an additional period, which may exceed 2 years from the time of placement, until an order for adoption may be entered under subsection (2).

(2) If a petition for rehearing or an appeal as of right from an order terminating parental rights has been filed, the court shall not order an adoption until 1 of the following occurs:

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

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

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

(3) If the person to be adopted is an adult, the court may enter an order of adoption after all of the following are completed:

(a) The filing required by section 43(3) of this chapter.

(b) The filing of the written report of investigation required by section 46(2) of this chapter.

(c) The serving of notice required pursuant to section 24a of this chapter.

Sec. 66. (1) If an adult adoptee who was adopted by a stepparent and the adult adoptee's parent whose rights have been terminated desire to rescind the adoption by the stepparent and restore the parental rights of that parent, they shall file a rescission petition with the probate court of the county in which the adoption by the stepparent was confirmed. This section applies to an adult adoptee who was adopted by a stepparent regardless of whether the adoptee was a minor at the time of adoption.

(2) The rescission petition shall be verified by both the adult adoptee and the parent whose rights were terminated, and shall contain the following information:

(a) The present name of each petitioner, the name of the adoptee at the time of birth and immediately after an adoption if different from the adoptee's present name, the name of the parent at the time of termination of parental rights, the date and place of the adoptee's birth, and the present place of residence of each petitioner.

(b) The name, date and place of birth, and address of the parent whose rights were not terminated and whose spouse adopted the adoptee, if known to either of the petitioners.

(c) The name of the stepparent at the time of the order of adoption, including the maiden name of the stepparent if applicable and if known, and the stepparent's date and place of birth.

(3) Subsequent to or concurrent with the filing of the rescission petition but before the hearing on the rescission petition by the court, the petitioners shall file with the court a copy of the adoptee's new certificate of live birth if a new certificate was established by the department of public health.

(4) Upon receipt of a rescission petition, the court shall conduct a hearing after notice is served by petitioners on the interested parties. The court may order an investigation by an employee or agent of the court and may enter an order of rescission of the adoption that restores the parental rights of the parent who filed the petition. The rescission of the adoption shall be effective from the date of the order of rescission.

(5) Certified copies of the order of rescission shall be given to each petitioner, and a copy shall be sent to the department of public health together with any other information required by section 2829 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.2829 of the Michigan Compiled Laws.

(6) After entry of an order of rescission, the adult adoptee becomes an heir at law of the parent whose parental rights have been restored and of the lineal and collateral kindred of that parent. After entry of the order of rescission, the adult adoptee is no longer an heir at law of a person who was his or her stepparent at the time of the order of rescission or an heir at law of the lineal or collateral kindred of that person, except that a right, title, or interest vesting before entry of the order of rescission shall not be divested by that order.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved.....

Governor.