

HOUSE BILL No. 4133

February 3, 2015, Introduced by Reps. Irwin, Moss, Hoadley, Sarah Roberts, Pagan, Dianda, Dillon, Byrd, Brinks, Geiss, Wittenberg, Schor, Guerra, Plawecki and Chang 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 2012 PA 614, 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) Except as otherwise provided in this section, ~~if~~
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**

1 THE PETITIONER IS MARRIED, THE PETITIONER'S HUSBAND OR WIFE MUST
2 JOIN IN THE PETITION. TWO UNMARRIED PERSONS MAY PETITION TO ADOPT A
3 CHILD BY FILING A PETITION UNDER THIS SECTION.

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

15 (3) ~~(2)~~ Notwithstanding any other provision in this section,
16 the court may allow either of the following to occur:

17 (a) A married individual to adopt an adult without his or her
18 spouse joining in the petition if all of the interested parties
19 consent.

20 (b) A married individual to adopt without his or her spouse
21 joining in the petition if the failure of the other spouse to join
22 in the petition or to consent to the adoption is excused by the
23 court for good cause shown or in the best interest of the child.

24 (4) ~~(3)~~ In an adoption proceeding in which there is more than
25 1 applicant, the petition for adoption shall be filed with the
26 court of the county where the parent's parental rights were
27 terminated or are pending termination. If both parents' parental

1 rights were terminated at different times and in different courts,
2 a petition filed under this section shall be filed in the court of
3 the county where parental rights were first terminated.

4 (5) ~~(4)~~—If a petition to adopt is filed in a county other than
5 that in which the petitioner resides or the prospective adoptee is
6 found, the chief judge of the court may, upon motion, enter an
7 order transferring jurisdiction of the matter to the court of the
8 county in which the petitioner resides or the prospective adoptee
9 is found.

10 (6) ~~(5)~~—The petition for adoption shall be verified by each
11 petitioner and shall contain the following information:

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

15 (b) Except as otherwise provided in subsection ~~(8)~~, **(9)**, the
16 name, date and place of birth, and place of residence if known of
17 the adoptee.

18 (c) The relationship, if any, of the adoptee to the
19 petitioner.

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

22 (e) The full description of the property, if any, of the
23 adoptee.

24 (f) Unless the rights of the parents have been terminated by a
25 court of competent jurisdiction or except as otherwise provided in
26 subsection ~~(8)~~, **(9)**, the names of the parents of the adoptee and
27 the place of residence of each living parent if known.

1 (g) Except as otherwise provided in subsection ~~(8)~~, **(9)**, the
2 name and place of residence of the guardian of the person or estate
3 of the adoptee, if any has been appointed.

4 **(7)** ~~(6)~~—In a direct placement, the petitioner shall attach to
5 the petition a verified statement certifying that the petitioner
6 has been informed of the availability of counseling services and
7 whether the petitioner has received counseling.

8 **(8)** ~~(7)~~—Except as otherwise provided in this subsection, in a
9 direct placement, the petitioner shall attach a copy of a
10 preplacement assessment of the petitioner completed or updated
11 within 1 year before the petition is filed with a finding that the
12 petitioner is suitable to be a parent of an adoptee, copies of all
13 other preplacement assessments of the petitioner, if any others
14 have been completed, and a verified statement stating that no
15 preplacement assessments of the petitioner have been completed
16 other than those attached to the petition and explaining any
17 preplacement assessments of the petitioner that have been initiated
18 but not completed. If the petitioner is seeking review of a
19 preplacement assessment under section ~~23f(8)~~ **23F(9)** of this
20 chapter, the petitioner may comply with this subsection by
21 attaching a copy of that preplacement assessment and a copy of the
22 application for review, together with copies of all other
23 preplacement assessments and the verified statement required by
24 this section.

25 **(9)** ~~(8)~~—In a direct placement in which the parties have
26 elected not to exchange identifying information, the information
27 required by subsection ~~(5)(f)~~ **(6) (F)** and (g) and the surname and

1 place of residence of the adoptee required under subsection ~~(5)(b)~~
2 **(6)(B)** may be omitted. The attorney or child placing agency
3 assisting in the adoption shall file a verified statement
4 containing the omitted information.

5 Sec. 41. (1) Except as provided in section 23d of this
6 chapter, a child shall not be placed in a home for the purpose of
7 adoption until an order terminating parental rights has been
8 entered ~~pursuant to~~ **UNDER** this chapter or chapter XIIIA and the
9 court has formally approved placement under section 51 of this
10 chapter. After an order terminating parental rights has been
11 entered, the court shall enter any appropriate orders ~~pursuant~~
12 **ACCORDING** to sections 45, 46, and 51 of this chapter. Such orders
13 shall not be withheld because the period specified for a rehearing
14 or an appeal as of right has not expired, or because of the
15 pendency of any rehearing or appeal as of right.

16 (2) If an order terminating parental rights is entered
17 ~~pursuant to~~ **UNDER** this chapter or chapter XIIIA, the child may be
18 placed in a home for the purpose of adoption during the period
19 specified for a rehearing or an appeal as of right and the period
20 during which a rehearing or appeal as of right is pending. When a
21 child placing agency, the court, or the department formally places
22 a child or the court approves placement of a child ~~pursuant~~
23 **ACCORDING** to this subsection, the child placing agency, court, or
24 department shall inform the person or persons in whose home the
25 child is placed that an adoption will not be ordered until 1 of the
26 following occurs:

27 (a) The petition for rehearing is granted, at the rehearing

1 the order terminating parental rights is not modified or set aside,
2 and subsequently the period for appeal as of right to the court of
3 appeals has expired without an appeal being filed.

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

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

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

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

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

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

25 (b) The best interests of the adoptee will be served by the
26 adoption.

27 (2) If it is necessary to hold a hearing before entering an

1 order terminating the rights of a parent, parents, or a person in
2 loco parentis, or if other good cause is shown, the time specified
3 in subsection (1) shall be extended for an additional 14-day
4 period.

5 (3) Upon entry of an order terminating rights of parents or
6 persons in loco parentis, a child is a ward of the court and a
7 consent to adoption executed ~~pursuant to~~ **UNDER** section 43 of this
8 chapter shall not be withdrawn after the order is entered. Entry of
9 the order terminates the jurisdiction of the same court or another
10 court over the child in a divorce or separate maintenance action.
11 If the petitioner for adoption is married to ~~the parent having~~
12 ~~legal custody of the child~~ **OR HAS JOINED IN AN ADOPTION PETITION**
13 **WITH THE PARENT HAVING LEGAL CUSTODY OF THE CHILD**, the child shall
14 not be made a ward of the court after termination of the rights of
15 the other parent.

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

1 order of adoption. After the sending agency gives its consent for
2 the adoption, that consent shall not be withdrawn.

3 (5) If a parent having legal custody of the child is married
4 ~~to the petitioner for adoption~~ **OR HAS JOINED IN AN ADOPTION**
5 **PETITION WITH THE PETITIONER**, the judge shall not enter an order
6 terminating the rights of that parent.

7 (6) If the parents of a child are divorced, or if the parents
8 are unmarried but the father has acknowledged paternity or is a
9 putative father who meets the conditions in section 39(2) of this
10 chapter, and if the parent having legal custody of the child
11 subsequently marries and that ~~parent's~~ **PERSON'S** spouse petitions to
12 adopt the child **OR THE PERSON HAVING LEGAL CUSTODY PETITIONS FOR**
13 **ADOPTION UNDER SECTION 24(1) OF THIS CHAPTER**, the court upon notice
14 and hearing may issue an order terminating the rights of the other
15 parent if both of the following occur:

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

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

26 (7) Unless otherwise ordered by the court, the prospective
27 adoptive parents with whom a child is placed ~~pursuant~~ **ACCORDING** to

1 a court order approving placement under this section may consent to
2 all medical, surgical, psychological, educational, and related
3 services for the child.