

Regular Session, 2013
HOUSE BILL NO. 578
BY REPRESENTATIVE NANCY LANDRY

ACT No. 86

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact Children's Code Articles 1281.3(1), (2), (3), and (5), 1281.4(A)(1)
3 and (2), 1281.5, 1281.6(A)(introductory paragraph), 1281.7, 1281.9, the heading of
4 Chapter 2 and 1282.1(A)(introductory paragraph) and (B), 1282.2(3), 1282.5, the
5 heading of Chapter 3 and 1283.1(A)(introductory paragraph) and (B), 1283.2(B)(1),
6 1283.4, 1283.10(C), the heading of Article 1283.13, 1283.15, and 1283.16 and to
7 enact Children's Code Articles 1281.3(6), Chapter 4 of Title XII-A of the Children's
8 Code, to be comprised of Articles 1284.1 through 1284.5, and Chapter 5 of Title
9 XII-A of the Children's Code, to be comprised of Articles 1285.1 through 1285.17,
10 relative to intercountry adoptions; to provide for intercountry adoption definitions;
11 to provide for types of intercountry adoptions; to provide for procedures for
12 recognition of foreign adoption decrees; to provide for procedures for adoption of
13 foreign orphans and Hague Convention adoptees; to provide for name changes and
14 issuance of a new birth certificate; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Children's Code Articles 1281.3(1), (2), (3), and (5), 1281.4(A)(1) and
17 (2), 1281.5, 1281.6(A)(introductory paragraph), 1281.7, 1281.9, the heading of Chapter 2
18 and 1282.1(A)(introductory paragraph) and (B), 1282.2(3), 1282.5, the heading of Chapter
19 3 and 1283.1(A)(introductory paragraph) and (B), 1283.2(B)(1), 1283.4, 1283.10(C), the
20 heading of Article 1283.13, 1283.15, and 1283.16 are hereby amended and reenacted and
21 Children's Code Articles 1281.3(6), Chapter 4 of Title XII-A of the Children's Code,
22 comprised of Articles 1284.1 through 1284.5, and Chapter 5 of Title XII-A of the Children's
23 Code, comprised of Articles 1285.1 through 1285.17, are hereby enacted to read as follows:

1 Art. 1281.3. Definitions

2 As used in this Title:

3 (1) "Agency" or "child placing agency" includes the Department of Children
 4 and Family Services, the corresponding department of any other state, and those
 5 private agencies and institutions licensed for the placement of children for adoption
 6 by the Department of Children and Family Services or by the corresponding
 7 department of any other state. Any person offering or providing intercountry
 8 adoption services shall be accredited by the Department of State in accordance with
 9 the Intercountry Adoption Universal Accreditation Act of 2012.

10 (2) "Birth certificate" means ~~the child's official birth certificate~~
 11 documentation of the child's record of birth acceptable to the United States
 12 Citizenship and Immigration Services and, if the ~~certificate document~~ is not in
 13 English, a certified translation of the ~~certificate document~~.

14 (3) ~~"Child" means a person under seventeen years of age and not~~
 15 ~~emancipated by marriage.~~ "Convention adoptee" or "Hague Convention adoptee"
 16 means a child living in a Hague Convention country who is under the age of sixteen
 17 at the time a Form I-800, Petition to Classify Convention Adoptee as an Immediate
 18 Relative, is filed on his behalf and who is found by the Department of State and
 19 United States Citizenship and Immigration Services to meet the definition of
 20 "Convention Adoptee" under Section 101(b)(1)(G) of the Immigration and
 21 Nationality Act (8 USC 1101(b)(1)(G)).

22 * * *

23 (5) "Foreign orphan" means a ~~foreign-born child~~ living in a Non-Hague
 24 Convention country (a) who is under the age of sixteen at the time a ~~visa petition~~
 25 Form I-600, Petition to Classify Orphan as an Immediate Relative is filed on his
 26 behalf and: ~~whose parents have both died or disappeared, or abandoned or deserted~~
 27 ~~him, or who has become separated or lost from both parents; whose sole surviving~~
 28 ~~parent is incapable of providing for the child's care and has in writing irrevocably~~
 29 ~~released the child for emigration and adoption, or who is a child born outside of~~
 30 ~~marriage whose father acknowledges paternity and signs a relinquishment along with~~

1 ~~the mother.~~ who is found by the Department of State or United States Citizenship
 2 and Immigration Service to meet the definition of "orphan" under Section
 3 101(b)(1)(F) of the Immigration and Nationality Act (8 USC 1101(b)(1)(F)); or (b)
 4 who is under the age of eighteen and is a biological sibling of a child previously
 5 adopted by the same applicant(s) who is petitioning on his behalf.

6 (6) "Hague Convention adoption" or "Hague adoption" or "Convention
 7 adoption" means the adoption of a child habitually residing in any country outside
 8 the United States that is a party to the Hague Adoption Convention. "Orphan
 9 adoption" or "Non-Hague adoption" refers to the adoption of a child from a country
 10 that is not a party to the Hague Adoption Convention.

Comments 2013

12 (a) Accreditation and approval is governed by Sections 201 et seq. of the
 13 Intercountry Adoption Act. See 22 CFR 96. 22 CFR 96.2 defines "adoption
 14 services" to include identifying a child for adoption and arranging an adoption;
 15 securing the necessary consent for termination of parental rights and for adoption;
 16 performing a background study on a child or a home study on a prospective adoptive
 17 parent(s) and reporting on such a study; making a non-judicial determination of the
 18 best interests of a child and the appropriateness of an adoptive placement for the
 19 child; monitoring a case after a child has been placed with a prospective adoptive
 20 parent(s) until final adoption; and when necessary on account of disruption prior to
 21 final decree, assuming custody and providing or facilitating the provision of child
 22 care or any other social service pending an alternative placement.

23 (b) U.S. Citizenship and Immigration Services birth certificates and other
 24 documentation requirements are governed by 8 CFR 103.2.

25 (c) Definition of "foreign orphan" is found in Section 101(b)(1)(F) of the
 26 Immigration and Nationality Act (8 USC 1101(b)(1)(F)) and is referenced in 8 CFR
 27 204.3.

28 (d) Definition of "convention adoptee" is found in Section 101(b)(1)(G) of
 29 the Immigration and Nationality Act (8 USC 1101(b)(1)(G)) and is referenced in 8
 30 CFR 204.300 - 314.

Art. 1281.4. Types of adoption

32 A. This Title sets forth the exclusive procedures for intercountry adoption
 33 of foreign orphans in Louisiana. There are two types of intercountry adoptions of
 34 foreign orphans in Louisiana:

35 (1) ~~Recognition~~ Adoption or recognition of a foreign decree of adoption of
 36 a foreign orphan from a country outside the United States that is not a party to the
 37 Hague Adoption Convention.

1 agency has unreasonably withheld its consent.

2 * * *

3 Art. 1281.9. Persons who may petition for intercountry adoption

4 A United States citizen and his spouse jointly who is a United States citizen
5 or has lawful immigration status may petition jointly, or an unmarried United States
6 citizen at least twenty-five years of age, may petition for intercountry adoption ~~of a~~
7 ~~foreign orphan~~. At least one petitioner shall be a domiciliary of Louisiana. When
8 one joint petitioner dies after the petition has been filed, the adoption proceedings
9 may continue as though the survivor was a single original petitioner.

10 Comment 2013

11 Requirements for the petitioner eligibility are more fully explained in 8 CFR
12 204.3. Form I-600A determines the eligibility and suitability of the prospective
13 adoption parents.

14 CHAPTER 2. NON-HAGUE CONVENTION COUNTRY ADOPTIONS

15 RECOGNITION OF FOREIGN ADOPTIONS

16 Art. 1282.1. Petition; contents; form

17 A. The petition for recognition of foreign adoption shall be styled: "In re
18 _____, Applying for Recognition of Foreign Adoption from a Non-Hague
19 Convention Country." The petition or an attached exhibit shall state:

20 * * *

21 B. The petition shall be accompanied by a certification for adoption, a
22 certified copy of the ~~Immigration and Naturalization Service~~ documentation of
23 orphan status, documentary proof of citizenship status, a copy of the child's
24 immigrant visa or resident alien card, the original or a certified copy of a valid
25 foreign adoption decree, together with a notarized translation, and the original or
26 certified copy of a valid birth certificate, together with a notarized translation, and
27 an affidavit of fees and expenses.

28 Comment 2013

29 Form I-600 is used to determine whether the child qualifies as an orphan
30 under Section 101(b)(1)(F) of the Immigration and Nationality Act (8 USC
31 1101(b)(1)(F)) and 8 CFR 204.3(b). The requirement for documentation of orphan
32 status would be met by an IR3 or IR4 stamp on the child's visa or by approval of the

1 Form I-604 report that addresses the child's eligibility under the Immigration and
2 Nationality Act provided in a Form I-171 or Form I-797. Documentation of
3 citizenship includes a permanent resident card or certificate of citizenship. Children
4 with an IR-3 immigrant visa automatically acquire citizenship upon entry to the
5 United States and a Certificate of Citizenship is provided by the U.S. Citizenship and
6 Immigration Services.

7 Art. 1282.2. Findings

8 The court shall issue a judgment recognizing the foreign adoption and
9 rendering a final decree of adoption upon finding that:

10 * * *

11 (3) The child has qualified as a foreign orphan and is in the United States in
12 accordance with applicable ~~Immigration and Naturalization Service~~ federal
13 regulations.

14 * * *

15 Art. 1282.5. Change of name

16 The full name of the adopted child may be changed in the final decree of
17 ~~recognition of foreign~~ adoption and, if changed, the surname shall be the same as that
18 of the adoptive parent. In accordance with R.S. 40:79, the clerk of court shall
19 forward, on a form supplied by the Department of Children and Family Services, his
20 certificate of the decree to the state registrar, who shall make a new certificate of live
21 birth of the person adopted, in the new name if the name has been changed in the
22 decree.

23 CHAPTER 3. NON-HAGUE CONVENTION COUNTRY ADOPTIONS

24 ADOPTION OF A FOREIGN ORPHAN

25 Art. 1283.1. Petition; contents; form

26 A. The petition for adoption of a foreign orphan shall be styled: "In re
27 _____, Applying for Adoption of Foreign Orphan from a Non-Hague
28 Convention Country." The petition or an attached exhibit shall state:

29 * * *

30 B. The petition shall be accompanied by a certification for adoption, a
31 certified copy of the ~~Immigration and Naturalization Service~~ United States
32 Citizenship and Immigration Services documentation of orphan status, a copy of the

1 child's immigrant visa or permanent resident card, the original or a certified copy of
 2 a valid foreign custody decree, together with a notarized translation, and the original
 3 or certified copy of a valid birth certificate, together with a notarized translation, and
 4 an affidavit of fees and expenses.

5 Comment 2013

6 The requirement for documentation of orphan status would be met by an IR3
 7 or IR4 stamp on the child's visa. Children with IR-4 visas do not acquire automatic
 8 citizenship upon entry to the United States, but become permanent residents and
 9 receive a permanent resident card (green card).

10 Art. 1283.2. Permissible reimbursement of expenses

11 * * *

12 B. Payments made by or on behalf of the adoptive parents or their
 13 representative to the department or to a child-placing agency or its agent or any
 14 broker for reimbursement of the following expenses are permissible and not a
 15 violation of R.S. 14:286:

16 (1) Reasonable medical expenses, including hospital, testing, nursing,
 17 pharmaceutical, travel, or other similar expenses incurred by the ~~natural~~ biological
 18 mother for prenatal care and those medical and hospital expenses incurred by the
 19 biological mother and child incident to birth.

20 * * *

21 Art. 1283.4. Service of process

22 A copy of the petition for adoption of a foreign orphan together with all
 23 exhibits shall be served by registered or certified mail, return receipt requested,
 24 postage prepaid and properly addressed to the department and on any agency having
 25 legal custody of the child. ~~Two copies of the same petition need not be served on the~~
 26 ~~department.~~

27 * * *

28 Art. 1283.10. Continuing duties of department

29 * * *

30 C. A second confidential report must be presented to the court preceding the
 31 hearing on the final decree of ~~approval of foreign~~ adoption. The findings of this

1 report shall be based upon the same ~~considerations~~ findings as prescribed in Article
2 1283.5 and shall disclose any changed conditions and all new pertinent information.

3 * * *

4 Art. 1283.13. Petition for final decree following interlocutory decree

5 * * *

6 Art. 1283.15. Effect of final decree

7 ~~Upon a final decree of approval of foreign adoption, the parents of the child~~
8 ~~are relieved of all their legal duties and divested of all their legal rights with regard~~
9 ~~to the adopted child, and the adopted child is relieved of all of his legal duties and~~
10 ~~divested of all his legal rights with regard to the parents, except the right of the child~~
11 ~~to inherit from his parents.~~ The final decree of adoption shall have the same force
12 and effect as any final decree of adoption rendered by a court of this state and
13 automatically entitles the child to United States citizenship under the Intercountry
14 Adoption Act.

15 Comment 2013

16 Proof of citizenship may be obtained by filing of an N-600 application with
17 the U.S. Citizenship and Immigration Services upon issuance of a full and final
18 decree of adoption.

19 Art. 1283.16. Change of name; issuance of birth certificate

20 The full name of the adopted child may be changed in the final decree of
21 foreign orphan adoption and, if changed, the surname shall be the same as that of the
22 adoptive parent. In accordance with R.S. 40:79, the clerk of court shall forward, on
23 a form supplied by the Department of Children and Family Services, his certificate
24 of the decree to the state registrar, who shall make a new certificate of live birth of
25 the person adopted in the new name if the name has been changed in the decree.

26 * * *

1 B. Payments made by or on behalf of the adoptive parents or their
2 representative to the department or to a child-placing agency or its agent or any
3 broker for reimbursement of the following expenses are permissible and not a
4 violation of R.S. 14:286:

5 (1) Reasonable medical expenses, including hospital, testing, nursing,
6 pharmaceutical, travel, or other similar expenses incurred by the biological mother
7 for prenatal care and those medical and hospital expenses incurred by the biological
8 mother and child incident to birth.

9 (2) Reasonable medical expenses, including hospital, testing, nursing,
10 pharmaceutical, travel, or other similar expenses and foster care expenses incurred
11 on behalf of the child prior to the decree of adoption.

12 (3) Reasonable expenses incurred by the department or the agency for
13 adjustment counseling and training services provided to the adoptive parents and for
14 home studies or investigations.

15 (4) Reasonable administrative expenses incurred by the department or the
16 agency, including overhead, court costs, travel costs, donations required by an
17 orphanage, notarial and interpreter fees, emigration permit costs, and attorney fees.

18 (5) Any other specific service or fee the court finds is reasonable and
19 necessary.

20 C. The payment of expenses permitted by Paragraph B of this Article may
21 not be made contingent on the placement of a child for adoption, relinquishment of
22 the child, or consent to the adoption.

23 D. Adoptive parents shall pay to the department any of the expenses listed
24 in Paragraph B of this Article which may be imposed by the department. Such
25 payments shall be imposed solely at the discretion of the department. The
26 department shall not include payment of the expenses listed in Paragraph B of this
27 Article as a requirement for adoption.

28 E. If a court determines from an accounting that an amount that is going to
29 be or has been disbursed for expenses permitted by Paragraph B of this Article is

1 unreasonable, it shall order a reduction in the amount disbursed, or to be disbursed,
2 and order the person who received the disbursement to refund that portion.

3 F. If a court determines from an accounting that an amount is going to be or
4 has been disbursed for expenses not permitted by Paragraph B of this Article, it may:

5 (1) Issue an injunction prohibiting the disbursement or order the person who
6 received the disbursement to refund it.

7 (2) Inform the district attorney for the consideration of criminal charges
8 pursuant to R.S. 14:286.

9 (3) If in the best interest of the child, the court may also refuse to approve
10 the adoption.

11 G. The court shall not issue a final decree of adoption until it has reviewed
12 and approved the final accounting.

13 H. A copy of the Adoption Disclosure Affidavit and all orders of the court
14 pursuant to this Article shall be mailed to the office of children and family services,
15 Department of Children and Family Services.

16 Comment 2013

17 Hague Convention Article 32 provides that no one shall derive improper
18 financial or other gain from an activity related to an intercountry adoption; only costs
19 and expenses, including reasonable professional fees of persons involved in the
20 adoption, may be charged or paid; and that directors, administrators, and employees
21 of bodies involved in an adoption shall not receive remuneration that is unreasonably
22 high in relation to services rendered.

23 Art. 1285.3. Adoption disclosure affidavit of fees and charges

24 A. Each petition for an adoption shall be accompanied by an affidavit
25 executed by the petitioner and petitioner's attorney containing an accounting of fees
26 and charges paid or agreed to be paid by or on behalf of the petitioner in connection
27 with the adoption.

28 B. The affidavit shall not include any identifying information as to the
29 biological parents, their families, or the child's birth name.

30 C. The form for the affidavit shall be as follows:

1 "ADOPTION DISCLOSURE AFFIDAVIT

2 BEFORE ME, the undersigned authority, personally came and appeared

3 _____ (petitioner) and _____ (attorney for petitioner), who, being first

4 duly sworn, did depose and state:

5 In the matter of the adoption by _____ (petitioner's name):

6 (1) We report the following fees and charges, or other things of value given

7 in connection with this adoption paid to any agency or individual:

8 Actual Estimated due: Due or paid to:

9 \$ \$

10 A. Agency administrative expenses:

11 1. Attorney fees

12 2. Court costs

13 3. Travel costs

14 4. Overhead

15 5. Other (Specify)

16 B. Agency Mental Health Counseling expenses:

17 1. Counseling for adoptive parents

18 2. Home study evaluations

19 3. Counseling for the child

20 4. Other (Specify)

21 C. Medical expenses for biological mother:

22 1. Medical

23 2. Travel

24 3. Other (Specify)

25 D. Medical/foster care expenses for child:

26 1. Medical

27 2. Travel

28 3. Other (Specify)

29 E. Other expenses (Specify):

1 requested, postage prepaid, and properly addressed to the department and on any
 2 agency having legal custody of the child.

3 Art. 1285.5. Duties of department; home study; confidential report

4 A. The department shall investigate the proposed adoption of the Hague
 5 Convention adoptee and submit a confidential report of its findings to the court. The
 6 findings shall include:

7 (1) The conditions with respect to the availability of the child for adoption.

8 (2) The physical and mental condition of the child.

9 (3) Other factors regarding the suitability of the child for adoption in
 10 petitioner's home.

11 (4) The moral and financial fitness of the petitioner.

12 (5) The conditions of the proposed adoptive home with respect to health,
 13 adjustment, and other advantages or disadvantages to the child.

14 B. The department may delegate the performance of this investigation to an
 15 authorized Hague Convention home study preparation agency, but the department
 16 remains responsible for ensuring the accuracy and thoroughness of the resulting
 17 report and for the safety and welfare of the child. The department shall adopt,
 18 promulgate, and enforce such rules and regulations as are necessary and appropriate
 19 to implement this authorization in accordance with the Administrative Procedure
 20 Act.

21 Art. 1285.6. Hearing

22 A. The court shall sign the order setting the time and place for the hearing
 23 of the petition for adoption of the Hague Convention adoptee not less than thirty nor
 24 more than sixty days after the filing of the adoption petition. The court may extend
 25 this time for good cause, which may include a showing by the department that it has
 26 been impossible to gather the necessary data within the time prescribed. The court
 27 may reduce the time to a minimum of fifteen days with written approval of the
 28 department and the petitioner.

29 B. At this hearing, the court shall consider:

30 (1) Any motion to intervene that has been filed.

1 Art. 1285.10. Continuing duties of department

2 A. After an interlocutory decree has been entered, the department shall
3 maintain contact with the proposed adoptive home directly or through another
4 agency in accordance with Paragraph B of this Article. The number of visits to the
5 home and the time for them shall be within the discretion of the department;
6 however, no less than two visits shall be made to the home, one of which shall occur
7 within thirty days before the final decree of adoption.

8 B. The department may delegate the performance of this investigation to a
9 licensed private adoption agency, but the department remains responsible for
10 ensuring the accuracy and thoroughness of the resulting report and for the safety and
11 welfare of the child. The department shall adopt, promulgate, and enforce such rules
12 and regulations as are necessary and appropriate to implement this authorization in
13 accordance with the Administrative Procedure Act.

14 C. A second confidential report must be presented to the court preceding the
15 hearing on the final decree of adoption. The findings of this report shall be based
16 upon the same findings as prescribed in Article 1285.5 and shall disclose any
17 changed conditions and all new pertinent information.

18 Art. 1285.11. Expiration of interlocutory decree

19 If no petition for a final decree is filed within two years after the granting of
20 an interlocutory decree, the latter shall become null and void unless good cause is
21 shown why an extension should be granted.

22 Art. 1285.12. Revocation of interlocutory decree

23 A. At any time before the entry of the final decree of adoption, the court for
24 good cause may revoke its interlocutory decree either on its own motion, on the
25 motion of the department, or on the motion of the petitioner or any person interested
26 in the child.

27 B. All parties upon whom service was originally made shall be notified at
28 least ten days prior to the signing of the order of revocation and shall be given an
29 opportunity to be heard upon their written request.

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Comment 2013

Although a foreign adoption decree is presumed valid on its face and formal recognition proceedings are not required by law, recognition by a Louisiana court provides a Louisiana adoption decree and allows for the issuance of a Louisiana birth certificate. When the adoption is full and final in the foreign country, citizenship is automatic and proof of citizenship will be received from U.S. Citizenship and Immigration Services without the need for further filing.

* * *

Art. 1283.8. Interlocutory decree

* * *

Comment 2013

Although an interlocutory decree is not required, extraordinary circumstances may warrant such a request.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____