

Regular Session, 2010

HOUSE BILL NO. 1146

BY REPRESENTATIVE LANDRY

ADOPTION: Provides relative to intrafamily adoptions

1 AN ACT

2 To amend and reenact Children's Code Article 1247(B), to enact Children's Code Article  
3 1244.1, and to repeal Children's Code Article 1245.1, relative to intrafamily  
4 adoptions; to provide for the filing of an opposition; to provide for a hearing; to  
5 provide for notice; to provide for an analysis regarding the appointment of an  
6 attorney by the court; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Children's Code Article 1247(B) is hereby amended and reenacted and  
9 Children's Code Article 1244.1 is hereby enacted to read as follows:

10 Art. 1244.1. Notice of opposition to intrafamily adoption; time limitations;  
11 appointment of counsel

12 A. A parent, whose rights have not been terminated in accordance with Title  
13 X or XI or who has not previously consented to the adoption in accordance with  
14 Article 1244, may oppose the adoption of his child by filing a clear and written  
15 declaration of intention to oppose the adoption. The notice of opposition shall be  
16 filed with the court within fifteen days from the time of service of the filing of an  
17 intrafamily adoption petition.

18 B. Upon receipt of the notice of opposition, the court shall appoint an  
19 attorney to represent the child, subject to the limitations in Article 1121. Neither the

1 child nor anyone purporting to act on his behalf may be permitted to waive this right.

2 The costs of the representation of the child shall be taxed as costs of court.

3 C. When the notice of opposition provides that the parent cannot afford to  
4 hire an attorney, the court shall determine whether due process requires the  
5 appointment of counsel at a separate hearing held within twenty days of the filing of  
6 the opposition.

7 D. The court shall set the opposition for contradictory hearing within forty-  
8 five days of the filing of the opposition.

9 E. Notice of the hearing shall be served in accordance with Articles 1133 and  
10 1134 on the opposing parent, the petitioner, counsel appointed for the child, and the  
11 other parent.

12 \* \* \*

13 Art. 1247. Service of process

14 \* \* \*

15 B. Except when waived in accordance with the provisions of Title XI or XII,  
16 notice shall be issued by the clerk and served, together with a copy of the petition,  
17 on every parent whose consent to the adoption is required pursuant to Article 1193  
18 and whose parental rights have not been terminated by a court of competent  
19 jurisdiction, and shall state:

20 Notice

21 Louisiana law provides that under certain circumstances your consent to the  
22 adoption of your child may be dispensed with and you can permanently lose your  
23 rights as a parent by final decree of adoption. An intrafamily adoption petition has  
24 been filed requesting the court to grant an adoption and terminate your parental  
25 rights to your child. A copy of the petition is attached to this notice. You may file  
26 an opposition to the adoption with the court within fifteen days of receiving this  
27 notice. A court hearing of your case has been scheduled for the \_\_\_ day of \_\_\_ at  
28 the \_\_\_ division of \_\_\_ court in the parish of \_\_\_\_\_. At this hearing, you may  
29 consent to the adoption or you may oppose the adoption. If you fail to appear, the

1 court can grant the adoption and terminate your rights despite your absence. If the  
 2 court at the trial finds that the facts set out in the petition are true and that adoption  
 3 is in the best interests of your child, the court can enter a judgment ending your  
 4 rights to your child. If the judgment terminates your parental rights, you will no  
 5 longer have any rights to visit or to have custody of your child or make any decisions  
 6 affecting your child, and your child will be legally freed to be adopted. This is a  
 7 very serious matter. You should contact an attorney immediately so that you can be  
 8 prepared for the court hearing. You have the right to hire an attorney and to have  
 9 him or her represent you. If you cannot afford to hire an attorney, you may call the  
 10 telephone number on the attached form for information concerning free legal aid.  
 11 ~~If free legal aid is not available, the court will appoint an attorney if the court finds~~  
 12 ~~that you are unable to pay some or all of the costs.~~ If you state in your opposition  
 13 that you cannot afford an attorney, the court will determine if an attorney will be  
 14 provided for you on \_\_\_\_\_ day of \_\_\_\_\_ at the \_\_\_\_\_ division of \_\_\_\_\_ court in  
 15 the parish of \_\_\_\_\_. Whether or not you decide to hire an attorney, you have the  
 16 right to attend the ~~hearing~~ hearings of your case, to call witnesses on your behalf, and  
 17 to question those witnesses brought against you. If you have any questions  
 18 concerning this notice, you may call the telephone number of the clerk's office which  
 19 is \_\_\_\_\_.

\* \* \*

20  
 21 Section 2. Children's Code Article 1245.1 is hereby repealed in its entirety.  
 22 Section 3. The Louisiana State Law Institute is hereby directed to prepare comments  
 23 to the provisions of this Act.

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Landry

HB No. 1146

**Abstract:** Provides procedures for intrafamily adoptions.

Present law (Ch.C. Art.1245.1) provides that if the adoption petition seeks to terminate parental rights of a parent whose consent to the adoption is required and the parent notifies the court of his intent to oppose the adoption, the child and the parent shall each have the right to be represented by separate counsel in the adoption proceeding.

Present law further provides that upon receipt of a notice of opposition, the court shall appoint a qualified, independent attorney to represent the child in such a proceeding. Neither the child nor anyone purporting to act on his behalf may be permitted to waive the child's right to counsel. The costs of the child's representation shall be taxed as costs of court.

Present law also provides that if the court determines that the parent is indigent and unable to employ counsel solely for that reason, an attorney shall be appointed to represent the parent. The costs of the indigent parent's representation may be taxed as court costs.

Proposed law repeals present law.

Proposed law provides a procedure for opposing an intrafamily adoption by filing an opposition within 15 days of service of a petition, provides for the appointment of counsel for the child, provides a due process hearing for the parent regarding the appointment of counsel, provides for notice to all parties, and provides that a contradictory hearing will be set within 45 days.

Present law provides that notice of an intrafamily adoption shall be issued to every parent whose consent to the adoption is required and shall state, in part, that parents have the right to hire an attorney and if they cannot afford one or free legal aid is not available, the court will appoint an attorney for them.

Proposed law deletes present law regarding the appointment of an attorney.

Proposed law adds to the notice the right of the parent to file an opposition. Further provides that if a parent states that he cannot afford an attorney, that a hearing to determine if counsel may be appointed and will be held on a certain day and at a certain court.

Proposed law directs the Louisiana State Law Institute to prepare comments to the provisions of proposed law.

(Amends Ch.C. Art. 1247(B); Adds Ch.C. Art. 1244.1; Repeals Ch.C. Art. 1245.1)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Provided a procedure for opposing an intrafamily adoption, including the appointment of counsel for the child, a due process hearing for the parent regarding the appointment of counsel, notice to all parties, and a contradictory hearing.

2. Provided notice to the parent that he may file an opposition and state that he cannot afford an attorney and added that a hearing to determine if counsel may be appointed and will be held on a certain day and at a certain court.
3. Directed the LSLI to prepare comments.